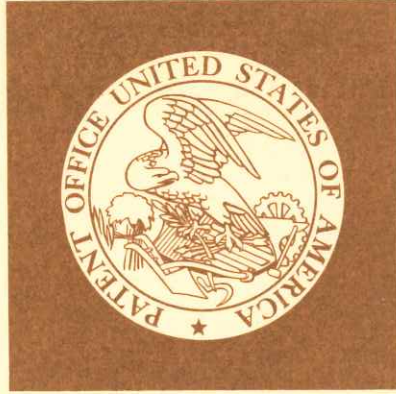


March 1963



Trademark
Rules of Practice

OF THE PATENT OFFICE

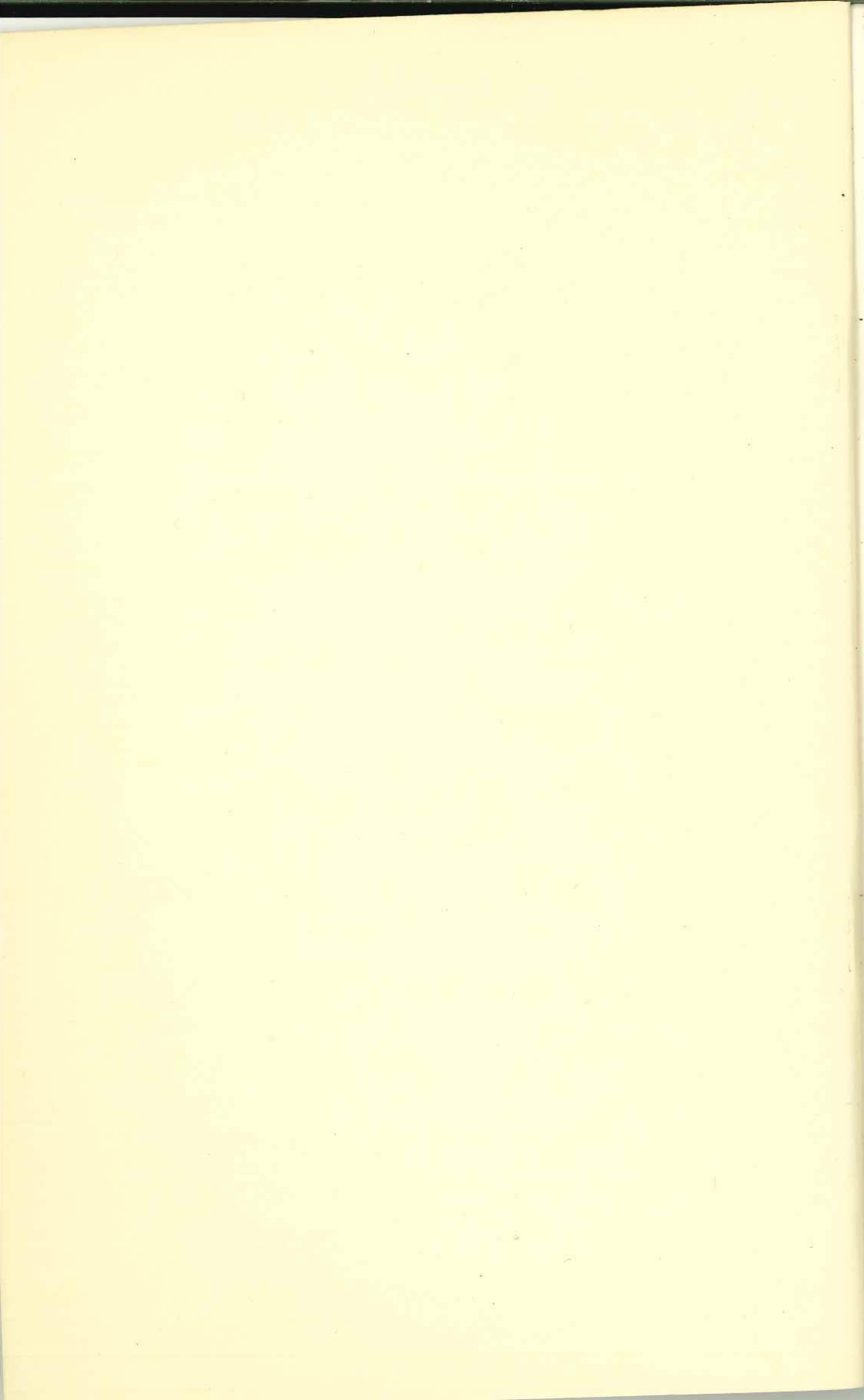
WITH FORMS AND STATUTES

U.S. DEPARTMENT OF COMMERCE

PATENT OFFICE

WASHINGTON, D.C.

347



Trademark Rules of Practice

OF THE PATENT OFFICE

With Forms and Statutes



March 1963

UNITED STATES DEPARTMENT OF COMMERCE

PATENT OFFICE

WASHINGTON, D.C.

U.S. DEPARTMENT OF COMMERCE

Luther H. Hodges, *Secretary*

PATENT OFFICE

David L. Ladd, *Commissioner*

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TRADEMARK RULES OF PRACTICE OF THE PATENT OFFICE

The following rules govern the practice and procedure in the Patent Office with respect to applications for the registration of trademarks. The revisions of August 10, 1961; November 11, 1962; and March 4, 1963, are included.

In the Federal Register and in the Code of Federal Regulations, the trademark rules are Part 2 of Title 37, Patents, Trademarks and Copyrights. The trademark forms are Part 4, and the classification of goods and services is Part 6. The number of the Part precedes the decimal point in the numbering of each rule.

The first three groups of rules in Part 1, Rules of Practice in Patent Cases, are made applicable to trademark cases, except when they specifically refer to patents, by Trademark Rule 2.1. These rules are placed first in the following text. The texts of other rules in Part 1 which are incorporated by reference or referred to in the trademark rules are incorporated herein at the appropriate places.

GENERAL INFORMATION AND CORRESPONDENCE

1.1 All communications to be addressed to The Commissioner of Patents. All letters and other communications intended for the Patent Office must be addressed to "The Commissioner of Patents," Washington 25, D.C. When appropriate, a letter may be marked for the attention of a particular officer or individual.

NOTE: Rules 1.1 to 1.26 [Patent Rules 1 to 26] are applicable to trademark cases as well as to patent cases except for provisions specifically directed to patents.

1.2 Business to be transacted in writing. All business with the Patent Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent Office is unnecessary. The action of the Patent Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

1.3 Business to be conducted with decorum and courtesy. Applicants and their attorneys or agents are required to conduct their business with the Patent Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by his direct order. Complaints against Examiners and other employees must be made in communications separate from other papers.

1.4 Nature of correspondence. (a) Correspondence with the Patent Office comprises (1) correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents or trademark registrations, orders for copies of records, transmission of assignments for recording, and the like and (2) correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing and prosecution of applications or other proceedings.

(b) Since each application file should be complete in itself, a separate copy of every paper to be filed in an application should be furnished for each application to which the paper pertains, even though the contents of the papers filed in two or more applications may be identical.

(c) Since different matters may be considered by different branches or sections of the Patent Office, each distinct subject, inquiry, or order should be contained in a separate letter to avoid confusion and delay in answering letters dealing with different subjects.

1.5 Identification of application, patent or registration. (a) When a letter concerns an application for patent, it should state the name of the applicant, the title of the invention, the serial number of application, the date of filing the same, and, if known, the division to which it has been assigned (see rule 55).

(b) When the letter concerns a patent, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention.

(c) A letter relating to a trademark application should identify it as such and by the name of the applicant and the serial number and filing date of the application. A letter relating to a registered trademark should identify it by the name of the registrant and by the number and date of the certificate.

1.6 Receipt of letters and papers. (a) Letters and other papers received in the Patent Office are stamped with the date of receipt. No papers are received in the Patent Office on Saturdays, Sundays, or holidays within the District of Columbia.

(b) Mail placed in the Patent Office pouch up to midnight on weekdays, excepting Saturdays and holidays, by the post office at Washington, D.C., serving the Patent Office, is considered as having been received in the Patent Office on the day it was so placed in the pouch.

(c) In addition to being mailed or delivered by hand during office hours, letters and other papers may be deposited up to midnight in a box provided at the guard's desk at the 14th and E Street entrance of the Patent Office on weekdays except Saturdays and holidays, and all papers deposited therein are considered as received in the Patent Office on the day of deposit.

1.7 Times for taking action; expiration on Saturday, Sunday, or holiday. Whenever periods of time are specified in these rules in days, calendar days are intended. When the day, or the last day, fixed by statute or by or under these rules for taking any action or paying any fee in the Patent Office falls on Saturday, Sunday, or on a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day which is not a Saturday, Sunday, or a holiday. See Rule 1.304 [and 2.145] for time for appeal or for commencing civil action.

NOTE: The following days are holidays in the District of Columbia: New Year's Day, January 1; Washington's Birthday, February 22; Memorial Day, May 30; Independence Day, July 4; Labor Day (first Monday in September); Veterans' Day, November 11; Thanksgiving Day (fourth Thursday in November); Christmas Day, December 25; Inauguration Day, January 20 (every 4 years).

RECORDS AND FILES OF THE PATENT OFFICE

1.11 Patent files open to the public. (Rule relates only to patents.)

NOTE: See rule 2.27 for trademark files.

1.12 Assignment records open to public inspection. The assignment records, including digests and indexes, are open to public inspection and copies of any instrument recorded may be obtained upon payment of the fee therefor. An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number of the application, an extra charge will be made for the time consumed in making a search for such assignment.

1.13 Copies and certified copies. (a) Copies of patents and trademark registrations and of any records, books, papers, or drawings belonging to the Patent Office and open to the public, will be furnished by the Patent Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Such copies will be authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name attested by an officer of the Patent Office authorized by the Commissioner, upon payment of the fee for the authentication certificate in addition to the fee for the copies.

1.14 Patent applications preserved in secrecy. (Rule relates only to patent applications.)

NOTE: See rule 2.27 for trademark applications.

FEEES AND PAYMENT OF MONEY

1.21 **Patent and miscellaneous fees and charges.** (See pamphlet of Patent Rules.)

1.22 **Fees payable in advance.** Fees and charges payable to the Patent Office are required to be paid in advance, that is, at the time of making application for any action by the Office for which a fee or charge is payable.

1.23 **Method of payment.** All payments of money required for Patent Office fees should be made in United States specie, Treasury notes, national bank notes, post office money orders or postal notes payable in Washington, D.C., or by certified checks. If sent in any other form, the Office may delay or cancel the credit until collection is made. Money orders and checks must be made payable to the Commissioner of Patents. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Patent Office will be at the risk of the sender; letters containing money should be registered.

1.24 **Coupons.** Coupons in denominations of ten cents and twenty-five cents are sold by the Patent Office for the convenience of regular purchasers of printed copies of patents, designs, and trademark registrations; these coupons will not be accepted for other purposes. The ten-cent coupons are sold individually and in pads of 20 for \$2.00 and books of 100 with stubs for record for \$10.00. The twenty-five-cent coupons are sold individually and in pads of 20 for \$5.00 and in books of 100 with stubs for record for \$25.00. These coupons are good until used; they may be transferred but cannot be redeemed.

NOTE: Public document coupons issued by the Superintendent of Documents cannot be used in the Patent Office, nor can the coupons issued by the Patent Office be used at the Government Printing Office or elsewhere.

1.25 **Deposit accounts.** (a) For the convenience of attorneys, agents, and the general public, in ordering services offered by the Office, copies of records, etc., special deposit accounts may be established in the Patent Office. A minimum deposit of \$25.00 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit.

(b) Filing, final, appeal, and petition fees will not be charged against these accounts.

1.26 Refunds. Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw his application or to withdraw an appeal, will not entitle a party to demand such a return. Amounts of ten cents or less will not be returned unless specifically demanded, within a reasonable time, nor will the payer be notified of such amount; amounts over ten cents but less than one dollar may be returned in postage stamps, and other amounts by check.

2.1 Sections of Part 1 applicable. Sections 1.1 to 1.26 of this chapter [Patent Rules 1 to 26] are applicable to trademark cases except such parts thereof which specifically refer to patents. Other sections of Part 1 (Rules of Practice in Patent Cases) incorporated by reference or referred to in particular sections of this part are also applicable to trademark cases.

2.6 Trademark fees.

In addition to the fees prescribed by statute, the following fees and charges are established by the Patent Office for trademark cases:

- (a) For each printed copy of a registration with data entered of record as of date of mailing, relating to renewal, cancellation, publication under section 12(c) of the 1946 Trademark Act and affidavits under sections 8 and 15 of such act----- \$0. 50
- (b) For photocopies or other reproductions of records, drawings, or printed material, per page of material copied-- . 30
- (c) (deleted)
- (d) For making drawings, when facilities are available, the cost of making the same, minimum charge per sheet----- 10. 00
- (e) For correcting drawings, the cost of making the correction plus a photoprint of the uncorrected drawing, minimum charge. ----- 3. 30

See rule 1.21 for patent and miscellaneous fees.

NOTE: Section 31 of the Trademark Act prescribes the following fees:

- (a) On filing each original application for registration of a mark in each class on either the Principal or the Supplemental Register----- \$25. 00
- (b) On filing each application for renewal in each class----- 25. 00
- (c) On filing each application for renewal in each class after expiration of the registration, an additional fee of----- 5. 00
- (d) On filing notice of claim of benefits of this act for a mark to be published under section 12(c) hereof----- 10. 00

(e)	On filing notice of opposition or application for cancellation	\$25. 00
(f)	On appeal from an Examiner in charge of the registration of marks	25. 00
(g)	For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake	10. 00
(h)	For certificate of correction of registrant's mistake	10. 00
(i)	For manuscript copies, for every 100 words or fraction thereof	. 10
(j)	For comparing other copies, for every 100 words or fraction thereof	. 05
(k)	For certifying in any case, additional	1. 00
(l)	For each additional registration or application which may be included under a single certificate, additional	. 50
(m)	For filing disclaimer or amendment after registration	10. 00
(n)	For abstracts of title:	
	For the search, one hour or less, and certificate	3. 00
	Each additional hour or fraction thereof	1. 50
	For each brief from the digest of assignments of two hundred words or less	1. 00
(o)	For certificate that trademark has not been registered—search and certificate (for deposit in foreign countries only)	3. 00
(p)	For title reports required for Office use	1. 00
(q)	For a single printed copy of statement and drawing	. 10
	If certified, for the grant, additional	1. 00
	For the certificate	1. 00
	If renewed, for copy of certificate of renewal, additional	1. 00
(r)	For recording every assignment or other paper not exceeding six pages	3. 00
	For each additional two pages or less	1. 00
	For each additional registration or application included, or involved in one writing where more than one is so included or involved, additional	. 50

NOTE: The Official Gazette is sold by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C., who also sets the price, and to whom all communications respecting the same should be addressed.

Official Gazette of the United States Patent Office:

Annual subscription, domestic	\$35. 00
Annual subscription, foreign	45. 00
Single numbers	1. 00

Portions of the Official Gazette supplied separately :

Decision leaflets :

Domestic, per annum-----	\$3. 00
Foreign, per annum-----	5. 00
Single numbers-----	. 10

Trademark section :

Domestic, per annum-----	10. 00
Foreign, per annum-----	13. 75
Single numbers-----	. 20

Annual index relating to trademarks; price varies, 1962 volume buckram-----	2. 50
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REPRESENTATION BY ATTORNEYS AND AGENTS

AUTHORITY NOTE : Rules 2.11 to 2.19 interpret or apply 66 Stat. 795; 35 U.S.C. 31, 32.

2.11 Applicants may be represented by an attorney. The owner of a trademark may file and prosecute his own application for registration of such trademark, or he may be represented by an attorney or other person authorized to practice in trademark cases. The Patent Office cannot aid in the selection of an attorney or agent.

2.12 Persons who may practice before the Patent Office in trademark cases. (a) Attorneys at law: Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, Territory, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, may represent others before the Patent Office in trademark cases. No application for recognition to practice in trademark cases by attorneys at law is required.

(b) Nonlawyers: Persons who are not attorneys at law as specified in paragraph (a) of this section are not recognized to practice before the Patent Office in trademark cases, except that persons not attorneys at law who were recognized to practice before the Patent Office under this chapter prior to January 1, 1957, will be recognized as agents to continue practice in trademark cases in the Patent Office.

(c) Foreign attorneys and agents: Any foreign attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent or trademark office of the country in which he resides and practices, may be recognized to represent applicants located in such country before the United States Patent Office in the presentation and prosecution of trademark applications: *Provided*, That the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases be-

fore the United States Patent Office. Such recognition shall continue only during the period that the conditions specified obtain.

(d) Recognition of any person under this section is not to be construed as sanctioning or authorizing the performance of any acts regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No persons other than those mentioned in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Patent Office in trademark cases. Any person may appear for himself, or for a firm of which he is a member, or for a corporation or association of which he is an officer and which he is authorized to represent, if such person, firm, corporation, or association is a party to the proceeding.

(f) Persons otherwise entitled to be recognized to practice under this section may, nevertheless, be refused recognition for cause.

2.13 Professional conduct. Attorneys and other persons appearing before the Patent Office in trademark cases must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts.

2.14 Advertising. (a) The use of display advertising, circulars, letters, cards, and similar material to solicit trademark business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or suspended or excluded from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs; simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of professional cards, listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories are not prohibited.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer.

2.15 Signature and certificate of attorney or agent. (a) Every paper filed by an attorney at law or other person representing an applicant or party to a proceeding in the Patent Office must bear the signature of such attorney at law or other person except those papers which are required to be signed by the applicant or party (such as the application itself and verifications required of applicants, registrants or others). The signature of an attorney at law or such other person to a paper filed by him, or the filing of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

(b) When an applicant or party is represented by a firm composed of attorneys at law, papers may carry the signature or name of the firm, with the signature of a member or associate of the firm.

(c) When an applicant or party is represented by a firm (registered in accordance with rule 1.341(d) of this chapter) which includes one or more nonlawyers, papers may carry the signature or name of the firm, but in any case, they must carry the signature of an individual member of the firm or of an individual employee of the firm who is registered in the Patent Office and who is authorized to sign on behalf of the firm, and the certification referred to in paragraph (a) of this section shall, in either case, be a certification by and on behalf of the firm and by the individual.

2.16 Suspension or exclusion from practice. The Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office any person, attorney, or agent shown to be incompetent or disreputable, or guilty of unethical or unprofessional conduct or gross misconduct, or who refuses to comply with the rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Patent Office, by word, circular, letter, or in any other manner. The reasons for any such suspension or exclusion shall be duly recorded. Proceedings for suspension, disbarment or exclusion from practice are conducted as provided in rule 1.348. (See 35 U.S.C. 1958, sec. 32 for review of the Commissioner's action by the United States District Court for the District of Columbia.)

2.17 Recognition for representation. (a) When an attorney at law acting in a representative capacity appears in person or signs a paper in practice before the Patent Office in a trademark case, his personal appearance or signature shall constitute a representation to the Patent Office that under the provisions of these rules and the law he is authorized, and qualified under rule 2.12(a), to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

(b) Before any nonlawyer will be allowed to take action of any kind in any application or proceeding, a written authorization from the applicant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed therein.

2.18 Correspondence held with attorney or agent. Correspondence will be held with the attorney at law, or other recognized person who shall have filed his written authorization, representing the applicant or party to a proceeding. Double correspondence will not be undertaken, and if more than one attorney at law appears or more than

one agent is authorized, correspondence will be held with the one last appearing or appointed, as the case may be, unless otherwise requested.

2.19 Revocation of power of attorney or authorization of agent. Authority to represent an applicant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and when it is so revoked, the Office will communicate directly with the applicant or party to the proceeding or with such other qualified person as may be authorized. The Patent Office will notify the person affected of the revocation of his authorization.

APPLICATION FOR REGISTRATION

2.21 Parts of application. A complete application for registration comprises:

- (a) A written application (see rules 2.31 to 2.47) ;
- (b) A drawing of the mark (see rules 2.51 to 2.55) ;
- (c) Five specimens or facsimiles (see rules 2.56 to 2.58) ;
- (d) The required filing fee;
- (e) A certification or a certified copy of the registration in the country of origin if the application is based on such foreign registration pursuant to section 44(e) of the act (see rule 2.39).

AUTHORITY NOTE: Rules 2.21 to 2.47 interpret or apply sec. I, 60 Stat. 427; 15 U.S.C. 1051.

2.22 Application must be complete to receive filing date. An application will not be considered filed unless all the required parts specified in rule 2.21, complying with the rules relating thereto, are received, but minor informalities may be waived subject to subsequent correction. If the papers are incomplete or so defective that they cannot be accepted, the applicant will be notified and the papers and fee held six months for completion. If the application is not completed within such time, the papers and fee will be returned to the applicant or otherwise disposed of; the drawing or fee of an unaccepted application may be transferred to a later application.

2.23 Serial number and filing date. Complete applications will be numbered as received, and the applicant will be informed of the serial number and filing date of the application. The filing date of the application is the date on which the complete application is received in the Patent Office in acceptable form.

2.24 Designation of representative by foreign applicant. If the applicant is not domiciled in the United States, he must designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent Office will be addressed to the domestic representative

unless the application is being prosecuted by an attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under rule 2.12(a), or qualified under paragraph (b) or (c) of rule 2.12 and authorized under rule 2.17(b).

2.25 Papers not returnable. After an application is filed the papers will not be returned for any purpose whatever; but the Office will furnish copies to the applicant upon request and payment of the fee.

2.26 Use of old drawing in new application. In an application filed in place of an abandoned or rejected application, or in an application for reregistration (rule 2.158), a new complete application is required, but the old drawing, if suitable, may be used. The application must be accompanied by a request for the transfer of the drawing, and by a permanent photographic copy, or an order for such copy, of the drawing to be placed in the original file. A drawing so transferred, or to be transferred, cannot be amended.

2.27 Pending application index; access to applications. (a) An index of pending applications including the name and address of the applicant, a reproduction or description of the mark, the goods or services with which the mark is used, the class number, the dates of use, and the serial number and filing date of the application will be available for public inspection as soon as practicable after filing. Access to the file of a particular pending trademark application will be permitted prior to publication under rule 2.81 upon the showing in writing of good cause for such access. Decisions of the Commissioner and the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

(b) After a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

THE WRITTEN APPLICATION

2.31 Application must be in English. The application must be in the English language and plainly written on but one side of the paper. Legal size paper, typewritten double spaced, with at least a one and one-half inch margin on the left-hand side and top of the page, is deemed preferable.

2.32 Application to be signed and sworn to by applicant. (a) The application must be made to the Commissioner of Patents and must be signed and verified (sworn to) by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Re-executed papers or a verified statement of continued use of the mark may be required when the application has not been filed in the Patent Office within a reasonable time after the date of execution.

(c) The signature to the application must be the correct name of the applicant, since the name will appear in the certificate of registration precisely as it is signed to the application. The name of the applicant, wherever it appears in the papers of the application, will be made to agree with the name as signed.

2.33 Requirements for application. (a) (1) The application shall include a request for registration and shall specify:

(i) The name of the applicant;

(ii) The citizenship of the applicant; if the applicant be a partnership, the names and citizenship of the general partners or, if the applicant be a corporation or association, the state or nation under the laws of which organized;

(iii) The domicile and post office address of the applicant;

(iv) That the applicant has adopted and is using the mark shown in the accompanying drawing;

(v) The particular goods on or in connection with which the mark is used;

(vi) The class of merchandise according to the official classification, if known to the applicant;

(vii) The date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application (see rule 2.38);

(viii) The date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce (see rule 2.38);

(ix) The mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified.

(2) If more than one item of goods is specified in the application, the dates of use required in subparagraph (1) (vii) and (viii) of this paragraph need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(3) The word "commerce" as used throughout this part means commerce which may lawfully be regulated by Congress, as specified in section 45 of the act.

(b) The application must also include averments to the effect that the applicant or other person making the verification believes himself or the firm, corporation, or association in whose behalf he makes the verification to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce, either in the identical form thereof or in such near resemblance

thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that the specimens or facsimiles show the mark as actually used in connection with the goods; and that the facts set forth in the application are true.

(c) For an application for the registration of a mark for goods or services falling within a plurality of classes, see rule 2.87.

2.35 Description of mark. A description of the mark, which must be acceptable to the Examiner of Trademarks, may be included in the application, and must be included if required by the Examiner. If the mark is displayed in color or a color combination, the colors should be described in the application.

2.36 Identification of prior registrations. Prior registrations of the same or similar marks owned by the applicant should be identified in the application.

2.37 Authorization for representation; U.S. representative. The authorization of a qualified person to represent applicant (rule 2.17 (b)) and the appointment of a domestic representative (rule 2.24) may be included as a paragraph or paragraphs in the application.

2.38 Use by predecessor or by related companies. (a) If the first use, the date of which is required by paragraph (a) (1) (vii) or (viii) of rule 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company, as the case may be.

(b) If the mark is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the act, such facts must be indicated in the application.

(c) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

(Sec. 5, 60 Stat. 429; 15 U.S.C. 1055)

2.39 Omission of allegation of use in commerce by foreign applicants. (a) The allegation that the mark is in use in commerce, required by rule 2.33(b), and the statements of the dates of applicant's first use, required by rule 2.33(a) (1) (vii) and (viii), may be omitted in the case of an application filed pursuant to section 44(e) of the act for registration of a mark duly registered in the country of origin of a foreign applicant, provided the application when filed is accompanied by a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which

registered and that said registration is then in full force and effect. If the certificate is not in the English language, a translation is required.

(b) Such allegations and statements may also be omitted in the case of an application claiming the benefit of a prior foreign application in accordance with section 44(d) of the act. The application in such case shall state the date and country of the first foreign application and, before the application can be considered as allowable, there must be filed a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and the date of filing of the application. In such cases the specification of goods shall not exceed the scope of that covered by the foreign registration or application. In the event the application is based upon a subsequent regularly filed application in the same foreign country the application must so state and must show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(Sec. 44, 60 Stat. 441 as amended; 15 U.S.C. 1126)

2.41 Proof of distinctiveness under section 2(f). (a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the act but which is said by applicant to have become distinctive in commerce of the goods set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, depositions, or other appropriate evidence showing duration, extent and nature of use and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use thereof by applicant for the five years next preceding the application filing date, a showing by way of verified statements in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

(Sec. 2, 60 Stat. 428; 15 U.S.C. 1052)

2.42 Concurrent use. (a) An application for registration as a lawful concurrent user shall specify and contain all the elements re-

quired by the preceding sections. The applicant in addition shall state in the application, to the extent of his knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to or applications filed by such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; the periods of such use; and the area, the goods, and the mode of use for which the applicant seeks registration.

(b) The verification shall be made with the stated exceptions.

(Sec. 2, 60 Stat. 428; 15 U.S.C. 1052)

2.43 Service mark. In an application to register a service mark, the application shall specify and contain all the elements required by the preceding sections for trademarks, but shall be modified to relate to services instead of to goods wherever necessary.

(Sec. 3, 60 Stat. 429; 15 U.S.C. 1053)

2.44 Collective mark. In an application to register a collective mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(Sec. 4, 60 Stat. 429; 15 U.S.C. 1054)

2.45 Certification mark. In an application to register a certification mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that he is not himself engaged in the production or marketing of the goods or services to which the mark is applied.

(Sec. 4, 60 Stat. 429, 435; 15 U.S.C. 1054)

2.46 Principal Register. All applications will be treated as seeking registration on the Principal Register unless otherwise stated in the application. Service marks, collective marks, and certification marks, registrable in accordance with the applicable provisions of section 2 of the act, are registered on the Principal Register.

2.47 Supplemental Register. In an application to register on the Supplemental Register, the application shall so indicate and shall specify that the mark has been in continuous use in commerce, specifying the nature of such commerce, by the applicant for the preceding year, if the application is based on such use. When an applicant requests registration without a full year's use of the mark, in accord-

ance with the last paragraph of section 23 of the act, the showing required must be separate from the application.

(Sec. 23, 60 Stat. 435; 15 U.S.C. 1091)

DRAWING

AUTHORITY NOTE: Rules 2.51 to 2.55 interpret or apply sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

2.51 Drawing required. (a) The drawing of the trademark shall be a substantially exact representation thereof as actually used on or in connection with the goods.

(b) The drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services. The drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

(c) In the case of an application for registration on the Supplemental Register, the drawing, when appropriate and necessary (section 23, third paragraph, of the act), may be the drawing of a package or configuration of goods.

(d) If the application is for the registration only of a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of rule 2.52.

2.52 Requirements for drawings. (a) *Character of drawing.* All drawings, except as otherwise provided, must be made with the pen or by a process which will give them satisfactory reproduction characteristics. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable. Every line and letter must be black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph (d) of rule 2.51.

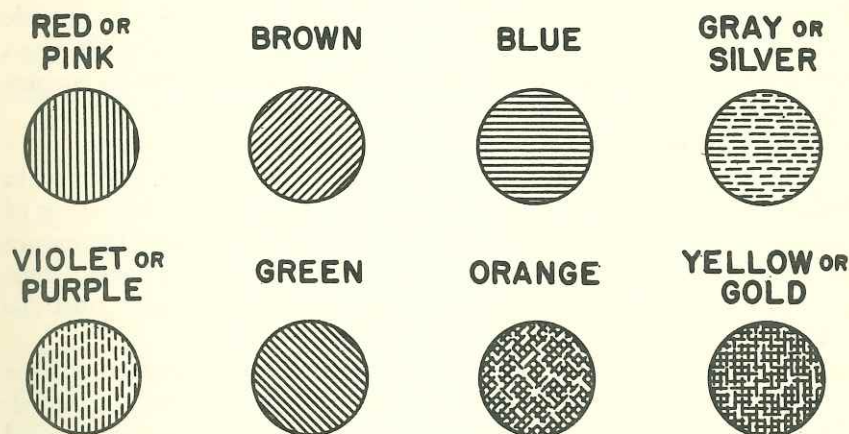
(b) *Paper and ink.* The drawing must be made upon pure white durable paper, the surface of which is calendered and smooth. A good grade of bond paper is suitable. India ink alone must be used for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not acceptable.

(c) *Size of paper and margins.* The size of the sheet on which a drawing is made must be 8 inches wide and 11 to 13 inches long. One of the shorter sides of the sheet should be regarded as its top. When the figure is longer than the width of the sheet, the sheet should be turned on its side with the top at the right. The size of the mark

must be such as to leave a margin of at least one inch on the sides and bottom of the paper and at least one inch between it and the heading.

(d) *Heading.* Across the top of the drawing, beginning one inch from the top edge and not exceeding one-fourth of the sheet, there should be placed a heading, listing in separate lines, applicant's name, applicant's post office address, the dates of first use, and the goods or services recited in the application (or typical items of the goods or services if a number are recited in the application). This heading may be typewritten.

(e) *Linings for color.* Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



2.53 Transmission of drawings. Drawings transmitted to the Patent Office, other than those typed in accordance with rule 2.51(d), should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for transmission in a suitable mailing tube to prevent mutilation or folding.

2.54 Informal drawings. A drawing not in conformity with the foregoing rules may be accepted for purpose of examination, but the drawing must be corrected or a new one furnished, as required, before the mark can be published or the application allowed. The necessary corrections will be made by the Patent Office upon applicant's request and at his expense. Substitute drawings will not be accepted unless they have been required by the Examiner or correction of the original drawing would require that the mark be substantially entirely redrawn.

2.55 Patent Office may make drawings. The Patent Office, at the request of applicants and at their expense, will make drawings if facilities permit.

SPECIMENS

AUTHORITY NOTE: Rules 2.56 to 2.58 interpret or apply sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

2.56 Specimens. The five specimens of a trademark shall be specimens of the trademark as actually used on or in connection with the goods in commerce, and shall be duplicates of the actually used labels, tags, or containers, or the displays associated therewith or portions thereof, when made of suitable material and capable of being arranged flat and of a size not larger than the size of the drawing.

2.57 Facsimiles. When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, five copies of a suitable photograph or other acceptable reproduction, not larger than the size specified for the drawing and clearly and legibly showing the mark and all matter used in connection therewith, shall be furnished.

2.58 Specimens or facsimiles in the case of a service mark. (a) In the case of service marks, specimens or facsimiles as specified in rules 2.56 and 2.57, of the mark as used in the sale or advertising of the services shall be furnished unless impossible because of the nature of the mark or the manner in which it is used, in which event some other representation acceptable to the Commissioner must be submitted.

(b) In the case of service marks not used in printed or written form, three single face, unbreakable, disc recordings will be accepted. The speed at which the recordings are to be played must be specified thereon. If facilities are not available to the applicant to furnish recordings of the required type, the Patent Office may arrange to have made, upon request, and at applicant's expense, the necessary disc recordings from any type of recording the applicant submits.

EXAMINATION OF APPLICATION AND ACTION BY APPLICANTS

AUTHORITY NOTE: Rules 2.61 to 2.69 interpret or apply sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

2.61 Action by Examiner. (a) Applications for registration will be examined or caused to be examined by the Examiner of Trademarks, and, if the applicant is found not entitled to registration for any reason, he will be so notified and advised of the reasons therefor and of any formal requirements or objections.

(b) The Examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.

2.62 Period for response. The applicant has six months from the date of mailing of any action by the Examiner to respond thereto. Such response may be made with or without amendment and must include such proper action by the applicant as the nature of the action and the condition of the case may require.

2.63 Re-examinations. After response by the applicant, the application will be re-examined or reconsidered, and if the registration is again refused or formal requirements insisted upon, but not stated to be final, the applicant may respond again.

2.64 Final action. On the first or any subsequent re-examination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal or to a compliance with any requirement.

2.65 Abandonment. If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned.

2.66 Revival of abandoned applications. An application abandoned for failure to respond may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a verified showing of the causes of the delay, and by the proposed response, unless the same has been previously filed.

2.67 Suspension of action by Patent Office. (a) Action by the Patent Office may be suspended for a reasonable time specified upon request of the applicant for good and sufficient cause. Only one suspension will be granted by the Examiner, and any further suspension must be approved by the Commissioner. No such suspension can extend any time fixed by statute for a response by the applicant.

(b) If registration is refused solely on the basis of a prior registration and the applicant files a petition to cancel the reference registration, such action upon notice thereof being placed in the application file by the applicant within the time for reply, shall be taken as a response to the refusal, and further action by the Office shall, at applicant's request, be suspended pending the termination of the cancellation proceeding.

2.68 Express abandonment. An application may be expressly abandoned by filing in the Patent Office a written declaration of abandonment signed by the applicant or, if assigned, by the assignee.

2.69 Compliance with other laws. When the sale or transportation of any product for which registration of a trademark is sought is regulated under an Act of Congress, the Office may, before allowance, make appropriate inquiry as to compliance with such act for the sole purpose of determining lawfulness of the commerce recited in the application.

AMENDMENT OF APPLICATION

AUTHORITY NOTE: Rules 2.71 to 2.75 interpret or apply sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

2.71 Amendments to application. (a) The application may be amended to correct informalities, or to avoid objections made by the Patent Office, or for other reasons arising in the course of examination. No amendments to the dates of use will be permitted unless such changes are supported by affidavit by the applicant and by such showing as may be required by the Examiner.

(b) Addition to the specification of goods or services will not be permitted unless the mark was in actual use on all of the goods or services proposed to be added by the amendment at the time the application was filed and unless the amendment is accompanied by additional specimens (or facsimiles) and by a supplemental affidavit by the applicant in support thereof.

(c) Amendment of the verification will not be permitted. If that filed with the application be faulty or defective, a substitute or supplemental verification must be filed.

2.72 Amendments to description or drawing. Amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit alleging that the mark shown in the amended drawing was in actual use prior to the filing date of the application. Amendments may not be made if the nature of the mark is changed thereby.

2.73 Amendment to recite concurrent use. An application may be amended in the Examiner's discretion so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of rule 2.42.

2.74 Form of amendment. (a) In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the deletion or insertion is to be made. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant or his attorney or agent.

(b) When an amendatory clause is amended, it must be wholly rewritten so that no interlineation or erasure will appear in the clause as finally amended, when the application is passed to registration. If the number or nature of the amendments shall render it otherwise difficult to consider the case or to arrange the papers for printing or copying, or when otherwise desired to clarify the record, the Examiner may require the entire statement to be rewritten.

2.75 Amendment to change application to different register. An application for registration on the Principal Register may be changed to an application for registration on the Supplemental Register and

vice versa by amending the application to comply with the rules relating to the requirements for registration on the appropriate register, as the case may be. The original filing date may be considered for the purpose of proceedings in the Patent Office provided the application as originally filed was sufficient for registration on the register to which amended. Otherwise, the filing date of the amendment will be considered the filing date of the application so amended.

PUBLICATION AND ALLOWANCE

2.81 Publication in Official Gazette. If, on examination or re-examination of an application for registration on the Principal Register, it appears that the applicant is entitled to have his mark registered, the mark will be published in the Official Gazette for opposition. The mark also may be so published in the case of an application to be placed in interference or concurrent use proceeding, if otherwise registrable.

2.82 Allowance of application. If no opposition is filed within the time permitted (rules 2.101 and 2.102), or if filed and dismissed, and if no interference is declared, or concurrent use proceeding instituted, the Examiner will sign the application file to indicate allowance and the application will be prepared for issuance of the certificate of registration as provided in rule 2.151.

2.83 Marks on Supplemental Register published only upon registration. In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or re-examination, that the applicant is entitled to have the mark registered, the Examiner will sign the application file to indicate allowance and prepare the application for issuance of the certificate of registration as provided in rule 2.151. The mark will be published in the Official Gazette when registered.

2.84 Jurisdiction over published or allowed applications. (a) After publication or allowance the Examiner may exercise jurisdiction over an application by special authority from the Commissioner.

(b) Amendments may be made after the allowance of an application if the certificate has not been printed, on the recommendation of the Examiner approved by the Commissioner, without withdrawing the allowance.

CLASSIFICATION

AUTHORITY NOTE: Rules 2.85 to 2.88 interpret or apply sec. 30, 60 Stat. 436; 15 U.S.C. 1112.

2.85 Classification of goods and services. There is established, for convenience of administration, the classification of goods and services set forth in Part 6 of this Chapter. Such classification shall not limit or extend the applicant's rights.

2.86 Plurality of goods or services comprised in single class may be covered by single application. A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the goods or services be stated and the mark has actually been used on or in connection with all of the goods or in connection with all of the services specified.

2.87 Combined applications. An application also may be filed to register the same mark for any or all of the goods or services upon or in connection with which the mark is actually used falling within a plurality of classes. However, a fee equaling the sum of the fees for filing an application in each class is required. A single certificate of registration for such mark may be issued.

2.88 Applications may be combined. (a) When several applications have been filed by the same applicant for registration on the same register of a mark shown in identical form on the drawings for goods in different classes, or services in different classes, and each of the applications has been allowed, a single certificate based on such several applications may be issued. A request for the issuance of a consolidated certificate must be made of record in each of the applications involved prior to the allowance of any of the applications.

(b) The issuance of any original certificate may be suspended upon request of the applicant, for a period not exceeding six months, to permit such consolidation.

INTERFERENCES

AUTHORITY NOTE: Rules 2.91 to 2.99 interpret or apply secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

2.91 Interferences. (a) Whenever application is made for registration on the Principal Register of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive, an interference may be declared to exist.

(b) An interference will not be declared between two applications unless a date of use prior to the filing date of the earlier filed application is asserted in the later filed application.

(c) An interference will not be declared between an application and a registration unless the date of use asserted in the application is prior to the filing date of the application which resulted in the registration but in any case an interference will not be declared between an application and a registration issued prior to the filing date of the application except upon specific authorization of the Commissioner.

(d) Registrations and applications to register on the Supplemental Register, registrations under the act of 1920, and registrations of marks the right to the use of which has become incontestable are not subject to interference.

2.92 Preliminary to interference. (a) Before the declaration of an interference, the marks which are to form the subject matter of the controversy must have been decided to be registrable by each party except for the interfering mark.

(b) The Examiner of Trademarks may require an applicant to put his application in condition for publication, within a time specified, not less than thirty days, in order that an interference may be declared. If any such applicant fails to put his application in condition for publication within the time specified, the declaration of interference will not necessarily be delayed.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the Examiner of Trademarks shall notify each of said parties and also the attorney of this fact.

2.93 Declaration of interference. An interference is declared and instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of his attorney or agent of record, if any, and if one of the parties is a registrant, the notice shall be sent to him or his assignee of record. The notice shall give the name and address of the adverse party and of his attorney or agent, if any, together with the serial number and date of filing and publication, if published, of each of the applications or registrations involved.

2.94 Interference motions. (a) Motions to dissolve an interference may be brought on the ground (1) that no interference in fact exists, (2) that there has been such irregularity in declaring the same as will preclude a proper determination of the interference, or (3) that an applicant's mark is not registrable.

(b) Any party may bring a motion to add to the interference any other conflicting application which he may own.

(c) Motions under paragraph (a) or (b) of this section shall be made not later than forty days after the notice of interference is mailed and shall contain a full statement of the grounds relied upon. Such motions, if in proper form, will be transmitted to the Examiner of Trademarks for determination. Such transmittal will act as a stay of proceedings pending the determination of the motion. If the motion is not in proper form or if it is not brought within the time specified and no good cause is shown for the delay, it will not be considered, and the parties will be so notified. Any brief in support of a motion shall be embodied in or accompany the motion and any statement or brief in opposition to a motion shall be filed within

twenty days after service of the motion; if not so filed, consideration thereof may be refused. Oral hearings will be held only at the request of any of the parties.

2.95 Decision on motion to dissolve. Appeal may be taken to the Trademark Trial and Appeal Board in the manner provided in rules 2.141 and 2.142 from a decision granting a motion to dissolve. No appeal may be had from a decision denying such a motion, but the question may be reviewed by the Trademark Trial and Appeal Board in its final decision in the interference.

2.96 Issues; burden of proof. The issue in an interference between applications shall be the respective rights of the parties to registration. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register. The party whose application or registration involved in the interference has the latest filing date (the junior party) will be regarded as having the burden of proof.

2.97 Enlargement of issue. Any party to an interference may within fifty days after the notice of interference is mailed, file a pleading setting forth affirmatively any matter on the basis of which, if proved, the other party would not be entitled to obtain or maintain a registration. Such pleading may request affirmative relief by way of cancellation of a registration involved, but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified and must be accompanied by the fee as required by section 14 of the act. A reply to such request for affirmative relief is required within twenty days after service thereof, but no reply need be filed to other affirmative defenses.

2.98 Adding party to interference. If, during the pendency of an interference, another case appears involving substantially the same registrable subject matter, the Examiner of Trademarks may request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course if no testimony has been taken. If, however, any testimony has been, or is about to be taken, the case will not be added except upon approval of a member of the Trademark Trial and Appeal Board. If the case is not so added, the Examiner of Trademarks may suspend action on such case pending termination of the interference proceeding, following which an interference may be instituted between such case and the case of the party prevailing in the first interference.

2.99 Application to register as concurrent user. (a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration. When it

determined that the mark is ready for publication or allowance, except for questions relating to concurrent registration, the applicant may be required to furnish as many copies of his written application, specimens and drawing, as may be necessary. The Examiner of Trademarks shall prepare notices for the applicant and for each applicant, registrant, or user specified in the application for registration as a concurrent user. Such notices for the specified parties shall give the name and address of the applicant and of his attorney or agent, if any, together with the serial number and filing date of the application.

(b) The notices shall be sent to each of the parties, in care of their attorneys or agents, if they have attorneys or agents of record, and if one of the parties is a registrant, a notice shall also be sent to him or his assignee of record. A copy of the application shall be forwarded with the notices to the parties specified in the application. An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified in the application to register as concurrent user but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of other parties specified in the application to register as concurrent user, answer must be filed within forty days after the mailing of the notice.

(c) The procedure shall follow the practice in interference proceedings insofar as it is applicable and the time limitations prescribed in such practice shall be applicable herein.

(Sec. 2, 18, 60 Stat. 428, 434; 15 U.S.C. 1052, 1068)

OPPOSITION

AUTHORITY NOTE: Rules 2.101 to 2.106 interpret or apply secs. 13, 17, 60 Stat. 433, 434; 15 U.S.C. 1063, 1067.

2.101 Time for filing opposition. Any person who believes that he would be damaged by the registration of a mark upon the Principal Register may, upon payment of the required fee, oppose the same by filing a verified opposition in the Patent Office within thirty days after the publication (rule 2.81) of the mark sought to be registered.

2.102 Extension of time. A request to extend the time for filing an opposition must be received in the Patent Office before the expiration of thirty days from the date of publication, and should be accompanied by a showing of good cause for the extension requested and specify the period of extension desired. In the event circumstances do not permit submission of such showing of good cause with the request, it should be furnished as promptly as possible and, in any event, within ten days after submission of such request.

2.103 Opposition filed by attorney or agent. An unverified opposition may be filed by a duly authorized attorney or agent. The unverified opposition and the required fee must be filed in the Patent

Office within thirty days after publication (rule 2.81) of the mark sought to be registered, but such opposition will be null and void unless verified by the opposer and the verification or verified opposition filed in the Patent Office within thirty days after such filing, or within such further time after such filing as may be fixed by the Commissioner upon request made before the expiration of said thirty days.

2.104 Contents of opposition. The opposition must allege facts tending to show why the opposer would be damaged by the registration of the opposed mark and state the specific grounds for opposition. A duplicate copy of the opposition including exhibits shall be filed.

2.105 Institution of opposition. (a) When an opposition is filed, the Examiner of Trademarks shall transmit the same, if regularly filed, to the Trademark Trial and Appeal Board.

(b) A notice shall be prepared, identifying the title and number of the proceeding and the application involved, and designating a time, not less than thirty days from the mailing date of such notice, within which answer must be filed. Copies of this notice shall be forwarded by the Trademark Trial and Appeal Board to the parties in care of their attorneys or agents, if they have attorneys or agents of record. The duplicate copy of the opposition and exhibits shall be forwarded with the notice to the applicant.

2.106 Answer. (a) If no answer is filed within the time set, the opposition may be decided as in case of default.

(b) An answer may contain any defense, and it may also contain a request for affirmative relief by way of cancellation of a registration pleaded in the opposition; but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified and must be accompanied by the fee as required by section 14 of the act. A reply to such request for affirmative relief is required within twenty days after service thereof, but no other reply to the answer need be filed.

(c) The opposition may be withdrawn without prejudice before the answer is filed. After answer is filed the opposition may not be withdrawn without prejudice except with the consent of the applicant.

2.107 Amendment of opposition. An opposition may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

CANCELLATION

AUTHORITY NOTE: Rules 2.111 to 2.114 interpret or apply secs. 14, 17, 24, 60 Stat. 433, 434, 436; 15 U.S.C. 1064, 1067, 1092.

2.111 Time for filing petition for cancellation. Any person who believes that he is or will be damaged by a registration may, upon payment of the required fee, apply to the Commissioner to cancel said

registration. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the act of 1920, or registrations under the act of 1881 or the act of 1905 which have not been published under section 12(c) of the act (rule 2.153), and in cases involving the grounds specified in section 14 (c), (d) and (e) of the act. In all other cases such petition must be made within five years from the date of registration of the mark under the act of 1946 or from the date of publication under section 12(c) of the act.

2.112 Petition for cancellation. The petition to cancel, which must be verified, must allege facts tending to show why the petitioner believes he is or will be damaged by the registration, state the specific grounds for cancellation, and indicate the respondent party to whom notice shall be sent. A duplicate copy of the petition, including exhibits, and an order for a title report for Office use (or an abstract of title) of the mark sought to be cancelled shall be filed with the petition. Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the fee for each application to cancel a registration must accompany the petition.

2.113 Notice of filing of petition. (a) When a petition for cancellation is filed, it shall be transmitted to the Trademark Trial and Appeal Board, which shall make examination thereof to determine if it is formally correct. If the petition is found to be defective as to form, the party filing the same shall be so advised and allowed a reasonable time for correcting the informality.

(b) When the petition is correct as to form a notice shall be prepared, identifying the title and number of the proceeding and the registration involved, and designating a time, not less than thirty days from the mailing date of such notice, within which answer must be filed. A copy of this notice shall be forwarded to the petitioner in care of his attorney or agent, if he has an attorney or agent of record. The duplicate copy of the petition and exhibits shall be forwarded with a copy of such notice to the registrant.

2.114 Answer. (a) If no answer is filed within the time set, the petition may be decided as in case of default.

(b) An answer may contain any defense, and it may also contain a request for affirmative relief by way of cancellation of a registration pleaded in the petition; but no defense attacking the validity of such registration may be otherwise raised in the proceeding. Such request for affirmative relief must be verified and must be accompanied by the fee as required by section 14 of the act. A reply to such request for affirmative relief is required within twenty days after service thereof, but no other reply to the answer need be filed.

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed the petition

may not be withdrawn without prejudice except with the consent of the registrant.

2.115 Amendment of petition for cancellation. A petition for cancellation may be amended in the same manner and to the same extent as a complaint in a civil action before a United States district court. See Rule 15 of the Federal Rules of Civil Procedure.

PROCEDURE IN INTER PARTES PROCEEDINGS

AUTHORITY NOTE: Rules 2.117 to 2.136 interpret or apply sec. 17, 60 Stat. 434; 15 U.S.C. 1067.

2.117 Federal Rules of Civil Procedure. (a) Except as otherwise provided, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure wherever considered applicable and appropriate.

(b) The party having the latest filing date in an interference, the opposer in an opposition proceeding, the petitioner in a cancellation proceeding, and the applicant to register as a concurrent lawful user (or such applicant having the latest filing date), shall be deemed to be in the position of plaintiff, and the other parties to such proceedings shall be deemed to be in the position of defendants.

(c) The opposition and the petition to cancel, and the answers thereto, correspond to complaint and answer in court proceedings. Such pleadings as may be filed in interference and concurrent registration proceedings will be treated as complaints or affirmative defenses, depending upon the party filing, but the filing of a pleading in such proceedings shall not operate to change the position of the parties as set forth in the preceding paragraph.

(d) The assignment of testimony periods corresponds to setting a case for trial in court proceedings.

(e) The taking of depositions during the assigned testimony periods corresponds to the trial in court proceedings.

(f) Oral hearing corresponds to oral summation in court proceedings.

2.118 Undelivered Office notices. When the notices sent by the Patent Office to any registrant are returned to the Office undelivered, or when one of the parties resides abroad and his representative in the United States is unknown, additional notice may be given by publication in the Official Gazette for such period of time as the Commissioner may direct.

2.119 Service of papers. (a) Every paper filed in the Patent Office in inter partes cases, including appeals, must be served upon the other parties as provided by rule 1.248 (Patent Rule 248) except the notices of interference (rule 2.93), the notice of opposition (rule 2.105), the petition for cancellation (rule 2.113) and the notices of a

concurrent use proceeding (rule 2.99), which are mailed by the Patent Office. Proof of such service must be made before the paper will be considered by the Office. A statement signed by the attorney or agent, attached to or appearing on the original paper when filed, clearly stating the time and manner in which service was made will be accepted as prima facie proof of service.

(b) When service is made by mail, the date of mailing will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by mail, five days shall be added to the prescribed period.

NOTE: Patent Rule 248 reads as follows:

1.248. SERVICE OF PAPERS; MANNER OF SERVICE. Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in either of the following ways: (a) by delivering a copy of the paper to the person served; (b) by leaving a copy at the usual place of business of the person served with someone in his employment; (c) when the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion; (d) transmission by first class mail, which may also be certified or registered. Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the Official Gazette.

2.120 Discovery procedure. The provisions of the Federal Rules of Civil Procedure relating to discovery are inapplicable in inter partes trademark cases except as specifically set forth in this section.

(a) *Depositions for discovery.* (1) Any party to an opposition, interference, cancellation or concurrent use proceeding may, at any time not later than thirty days prior to the day upon which any testimony may first be taken as set by initial or subsequent Office action, take the deposition of any person, including a party, for the purpose of discovery. Such depositions may be taken upon oral examination in the manner prescribed by rules 1.273, 1.274 and 1.275 of this chapter, or upon written questions in the manner prescribed by rule 2.124. The responsibility for securing the attendance of proposed deponents rests wholly with the interested party.

(2) *Scope of examination.* The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) *Use of discovery depositions.* Discovery depositions may be used in accordance with rule 26 (d) (1), (2) and (4) and (f) of the Federal Rules of Civil Procedure, provided the party offering the deposition, or any part thereof, in evidence files the same before the close of his testimony period and also files a notice of reliance thereon. Objections, including any made during the examination, will be considered only if made or renewed at the hearing.

(b) *Request for admission.* (1) Any party to an opposition, interference, cancellation or concurrent use proceeding may, within the time specified for taking depositions for discovery, serve upon any adverse party two copies of a written request for admission by the latter of the genuineness of any relevant document described in and attached to the request (a photocopy may be attached provided the original thereof is made available for inspection), or of the truth of any facts which are material and relevant to the issues and which are believed to be within the knowledge of both the parties serving and the parties served. Each matter in respect of which an admission is requested shall be considered as admitted unless, within fifteen days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a sworn statement denying specifically the matter in respect of which admission is requested, or setting forth in detail the reasons why he cannot truthfully either admit or deny the same, or files objections thereto together with one copy of the request for admission. Any reply to such objection shall be due within ten days after service thereof.

(2) *Effect of admissions.* No admission shall be considered as part of the record in the case unless a party files, before the close of his testimony period, a notice of reliance thereon and a copy of the admission and request therefor.

(c) *Motion to produce documents, etc., for inspection and copying.* Upon motion showing good cause therefor, filed prior to the day upon which any testimony may first be taken as set by initial or subsequent Office action, an order may be entered requiring a party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated books, documents or other tangible things, not privileged, the existence of which has been pleaded or otherwise acknowledged, and which constitute or contain material within the scope of inquiries permitted in depositions for discovery and which are in his possession, custody or control. The order shall specify a time for compliance therewith, and may prescribe such terms and conditions as may be just.

(d) *Refusal to comply with an order to produce.* If any party fails or refuses to comply with an order to produce and permit the inspection and copying or photographing of designated things, the

Trademark Trial and Appeal Board may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment as by default against that party, or take such other action as may be deemed appropriate.

(e) *Examination and cross-examination.* A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

(f) *Interrogatories.* (1) Any party to an opposition, interference, cancellation or concurrent use proceeding may, within the time specified for taking depositions for discovery, serve upon any adverse party a written interrogatory limited to the name and address of the person or persons having knowledge of the facts contained in the pleading of such adverse party. An answer to the interrogatory shall be served upon the interrogating party within fifteen days after receipt thereof.

(2) If a party refuses to answer an interrogatory so limited, the Trademark Trial and Appeal Board may take any of the measures specified in paragraph (d) of this section for refusal to comply with an order to produce.

2.121 Assignment of times for taking testimony. (a) Times will be assigned for the taking of testimony in behalf of each of the parties, and no testimony shall be taken except during the times assigned. If there be more than two parties to an interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties, to rebut their evidence, and to meet the evidence of junior parties.

(b) The times will ordinarily be assigned in the notices sent by the Patent Office in interferences and in concurrent use proceedings, and in a notice sent after the answers have been filed in cases of opposition and cancellation.

2.122 Matters in evidence. (a) The files of the applications or registrations specified in the declaration of interference or in the notice in case of concurrent registration proceedings, of the application against which an opposition is filed, and of the registration against which a petition for cancellation or an affirmative defense requesting cancellation is filed, form part of the record of the proceeding without any action by the parties, and may be referred to for any relevant and competent purpose.

(b) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if two copies of the printed registration accompany the opposition or petition. The Office will take notice of the fact shown by its records of renewal of such registrations, the publication thereof under section 12 (c), the filing of affidavits under section 8, and the filing of affidavits under section 15, and such matters need not be proved by the parties. Notice will also be taken of a recorded assignment identified in an opposition or petition to cancel or other pleading, and such pleaded recorded paper need not be otherwise proved by the parties.

2.123 Testimony in inter partes cases. (a) Testimony of witnesses in inter partes cases may be taken (1) by depositions on oral examination in accordance with rules 1.273 to 1.281, 1.283, 1.285, 1.286 of this chapter (Patent Rules 273 to 281, 283, 285, 286), or (2) by written questions as provided by rules 2.124 and 2.124a.

(b) If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated.

(c) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation, and official records, may be introduced as provided in rule 1.282 (Patent Rule 282) of this chapter. When a copy of an official record of the Patent Office is filed, it need not be a certified copy.

(d) Evidence not obtained and filed in compliance with these sections will not be considered.

(66 Stat. 795; 35 U.S.C. 23)

NOTE: The Patent Rules referred to above read as follows:

1.273. NOTICE OF EXAMINATION OF WITNESSES. (a) Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in rule 248, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. The opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place

at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other cannot be had.

(b) The notice for taking testimony must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Such notice shall, with a statement signed by the attorney as to the fact, time and mode of service thereof, be attached to the deposition or depositions, whether the opposing party shall have cross-examined or not.

1.274. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN. (a) Within the United States, or within a territory or insular possession of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) No such officer who is a relative or employee of either of the parties, or of their attorneys or agents, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent or otherwise, shall be competent to take depositions, unless with the written consent of all the parties.

1.275. EXAMINATION OF WITNESSES. (a) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of rule 274 (b)) in the presence of the officer except when his presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise.

(c) In the absence of all opposing parties and their attorneys or agents, testimony may be taken in longhand, typewriting, or stenographically.

(d) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(e) When the testimony has been transcribed, the deposition shall be carefully read over by the witness, or by the officer to him, and shall then be signed by the witness in the presence of the officer unless the reading and the signature be waived on the record by agreement of all parties.

1.276. CERTIFICATION AND FILING BY OFFICER. The officer shall annex to the deposition his certificate showing: (a) Due administration of the oath by the officer to the witness before the commencement of his testimony; (b) the name of the person by whom the testimony was taken down, and whether, if not taken down by the officer, it was taken down in his presence; (c) the presence or absence of the adverse party; (d) the place, day, and hour of commencing and taking the deposition; (e) that the deposition was read by or to the witness before he signed the same, and that he signed the same in the presence of the officer; and (f) the fact that the officer was not disqualified as specified in rule 274. If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. Unless waived on the record by agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribed upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude

it from the envelope, it shall unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package, marked and addressed as provided in this rule.

1.277. FORM OF DEPOSITION. (a) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The testimony may be written on legal-size or letter-size paper, with a wide margin on the left hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered and each question must be followed by its answer.

(b) In order to have a ribbon copy of the record available as required by rule 253 (f), a carbon copy of the deposition may be executed by the witnesses and the officer and filed as required by rule 276.

(c) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

1.278. DEPOSITIONS MUST BE FILED. All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

1.279. INSPECTION OF TESTIMONY. After testimony is filed in the Office, it may be inspected by any party to the case, but it cannot be withdrawn for the purpose of printing. It may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

1.281. ADDITIONAL TIME FOR TAKING TESTIMONY. If either party shall be unable to procure the testimony of a witness or witnesses within the time limited and said time has expired or is about to expire, and desires additional time for such purpose, he must file a motion, accompanied by a statement under oath setting forth specifically the cause of such inability, the name or names of the witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on which efforts have been made to procure it.

1.282. OFFICIAL RECORDS AND PRINTED PUBLICATIONS. (a) Official records and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be introduced in evidence by filing in the Patent Office a notice to that effect, before the closing of the time for taking the testimony of the party (before the time for taking the testimony in chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages thereof to be used, indicating generally its relevancy, and accompanied by the record or authenticated copy, or the printed publication or a copy. The notice and copies of the record or publication must be served on each of the other parties.

(b) In the case of prior applications, the filing date of which is claimed, compliance with the requirements of rules 216 and 224 is sufficient notice under this rule.

1.283. TESTIMONY TAKEN IN ANOTHER INTERFERENCE OR ACTION. Upon motion duly made and granted, testimony taken in another interference proceeding, or testimony taken in a suit between the same parties or those in interest, may be used in an interference proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken, and to take other testimony in rebuttal of the testimony.

1.285. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS. Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof.

(a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless objection is promptly made and served in writing upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

1.286. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of rule 285, objection may be made to receiving in evidence any deposition or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence according to the established rules of evidence, which will be applied strictly by the Office.

2.124 **Testimony by written questions.** (a) A party may take the testimony of a witness by written questions to be propounded by an officer before whom depositions may be taken. See rule 1.274 of this chapter. The questions shall be served upon the other party within ten days after the opening date set for taking the testimony of the party submitting the questions, together with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten days thereafter a party so served may serve cross questions upon the party proposing to take the deposition. Within five days thereafter the latter may serve redirect questions upon a party who has served cross questions. Within three days after being served with redirect questions, a party may serve recross questions upon the party proposing to take the depositions. Written objections to questions may be served on the party propounding the questions, within the time allowed the objector for serving

further questions, and in response thereto substitute questions may be served, within three days.

(b) A copy of the notice and copies of all questions served shall be delivered by the party taking the testimony to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare, certify, and file the deposition, attaching thereto the copy of the notice and the questions received by him. Such depositions are subject to the same rules for filing and serving copies as other depositions.

(c) On motion made within ten days after service of the notice and written questions, it may be ordered, for good cause shown, that the testimony be not taken in accordance with this section but by oral examination of the witness.

2.124a Testimony taken in foreign countries. Upon motion duly made and granted, testimony may be taken in foreign countries, upon complying with the following requirements:

(a) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for the purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(b) It must appear that the testimony desired is material and competent, and that it cannot be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(c) Upon the granting of such motion, the Trademark Trial and Appeal Board will execute and forward to the moving party a commission authorizing the appropriate consular or other officer to take the depositions, and a time will be set within which the moving party shall serve in duplicate on each adverse party the interrogatories to be propounded to each witness, and such adverse party may, within a designated time, serve in duplicate, on the moving party cross-interrogatories. Objections to any of the interrogatories may be served with, or prior to service of, cross-interrogatories and objections to any of the cross-interrogatories may be served at any time before the depositions are taken, and testimony will be taken subject to the objections. Such objections will be considered and determined upon the hearing of the case if renewed at that time.

(d) As soon as the cross-interrogatories are served, the moving party will forward the interrogatories, the cross-interrogatories, the

commission, and security for official fees* to the proper officer, with the request that he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing and transmit the same, under his official seal and signature to the Commissioner of Patents with the certificate prescribed in rule 1.276 of this chapter. The letter of transmittal of the moving party should direct attention of the consular or other officer to the instructions on the reverse side of the commission and should indicate that any insufficiency or excess of the security for official fees should be directed to the attention of the said party; and in view of the requirements of rules 1.253 and 2.125 of this chapter for filing and serving copies of testimony, the desired number of copies of the testimony should be requested by the moving party.

(e) By stipulation of the parties the requirements of paragraph (c) of this section as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties, their attorneys or their agents.

(f) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state in which it shall be taken, it will not stand on the same footing in the Patent Office as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

2.125 Copies of testimony. (a) One copy of the transcript of testimony (taken in accordance with rules 1.275 to 1.278 of this chapter or rule 2.124 or 2.124a) together with copies of documentary exhibits, shall be served on each adverse party within thirty days after completion of the taking of such testimony. The original transcript and exhibits and one copy of the transcript, shall be filed in the Patent Office as promptly as possible.

(b) Each transcript and the copies thereof shall comply with rule 1.253 of this chapter as to arrangement, indexing and form.

2.126 Allegations in application not evidence on behalf of applicant. The allegation of dates of use in the application for registration of the applicant or registrant cannot be used as evidence in behalf of the party making the same nor are exhibits attached to pleadings, or specimens in application and registration files, considered

*[NOTE: The schedule of fees for services relating to taking testimony appears in Title 22 C.F.R., section 22.1, item 65. Ordinarily, the cost does not exceed \$50.00; and it is therefore recommended that the security for official fees herein referred to be in the form of a bank draft or certified check in the amount of \$50.00 payable to the officer identified in the commission. After the papers have been forwarded to the proper officer, inquiries or other communications concerning the taking of such testimony should be directed to such officer and not the Patent Office.]

as evidence of use on behalf of the party who filed them, unless identified and introduced in evidence as other exhibits.

2.127 Motions. (a) Motions shall be made in writing and shall contain a full statement of the grounds therefor. Any brief or memorandum in support of a motion shall accompany or be embodied in the motion. Briefs in opposition to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended on request. Oral hearings will not be held on motions except on order of the Trademark Trial and Appeal Board.

(b) Any petition for reconsideration or modification of a decision, if it is not appealable, must be filed within ten days after the decision or, if the decision is appealable, within the time specified in rule 2.129(c).

(c) Interlocutory motions, requests, and other matters not finally determinative in the proceeding may be acted upon by a member of the Trademark Trial and Appeal Board.

2.128 Final hearing and briefs. (a) The brief of a party in the position of plaintiff shall be filed not later than sixty days after the closing date set for rebuttal testimony; the brief of a party in the position of defendant not later than thirty days after the due date of the first brief; a reply brief by a party in the position of plaintiff, if filed, shall be due fifteen days after the due date of the brief to which it is a reply. Three copies of all briefs should be filed.

(b) Briefs may be submitted in typewritten or printed form, except that where they are in excess of thirty typewritten pages, they shall be printed in conformity with rule 1.254 of this chapter. Typewritten briefs may be written on letter or legal size paper and shall be double-spaced. Each brief shall contain an alphabetical index of cases cited therein.

NOTE: Patent Rule 254 reads as follows:

1.254. BRIEFS AT FINAL HEARING. Briefs at final hearing before the Board of Patent Interferences shall be submitted in printed form, except that when not in excess of fifty legal-size double spaced typewritten pages, or the equivalent thereof and in any other case where satisfactory reason therefor is shown, they may be submitted in typewritten form. If submitted in printed form, they shall be the same in size and the same as to page and print as is specified for printed copies of testimony. Typewritten briefs shall conform to the requirements for typewritten copies of testimony, except that legal size paper may be used and the binding and covers specified are not required. Three copies of each brief must be filed. Unless other dates are set by an examiner of interferences, the brief of the junior party or parties shall be filed not less than forty days, and that of the senior party not less than twenty days prior to the hearing. Reply briefs, if filed, shall be due not less than ten days before the hearing.

(c) If a party desires an oral hearing, he should so state by a separate notice filed not later than ten days after the due date of the reply brief of the party in position of plaintiff, and the time for such hear-

ing will be set in a notice sent to each party by the Office. If no request for oral hearing is made, the case will be decided on the record and briefs.

2.129 Oral argument. (a) Oral arguments will be heard by at least three members of the Trademark Trial and Appeal Board at the time stated in the notice. If any party appears at the specified time, he will be heard. If the Board is prevented from hearing the case at the time specified, a new assignment will be made, or the case will be continued from day to day until heard. Unless otherwise permitted, oral arguments will be limited to one-half hour for each party.

(b) Hearings may be advanced or adjourned, as far as is convenient and proper, to meet the wishes of the parties and their attorneys or agents.

(c) Any petition for rehearing, reconsideration, or modification of a decision must be filed within thirty days from the date thereof.

2.130 New matter suggested by Examiner of Trademarks. If, during the pendency of an inter partes case, facts appear which, in the opinion of the Examiner of Trademarks, render the mark of any applicant involved unregistrable, the attention of the Trademark Trial and Appeal Board shall be called thereto. The Board may suspend the proceeding and refer the application to the Examiner of Trademarks for his determination of the question of registrability, following the final determination of which the application shall be returned to the Board for such further inter partes action as may be appropriate. The consideration of such facts by the Examiner of Trademarks shall be ex parte, but a copy of the action of the Examiner will be furnished to the parties to the inter partes proceeding.

2.131 Ex parte matter in an inter partes case. If, in considering an inter partes case involving an application, facts appear which, in the opinion of the Trademark Trial and Appeal Board, render the mark of the applicant unregistrable on one or more ex parte grounds, the Board shall in its decision on the inter partes issues in the case recommend that if the applicant finally prevails in the case, registration be withheld pending a re-examination by the Examiner of Trademarks of the application in the light of such facts. If, upon such re-examination following termination of the inter partes case, the Examiner of Trademarks finally refuses registration to applicant, appeal may be taken as provided in rules 2.141 and 2.142.

2.132 Failure to take testimony. (a) Upon the filing of a statement by any party in the position of defendant, that the time for taking testimony on behalf of any party in the position of plaintiff has expired and that no testimony has been taken by him and no other evidence offered, an order may be entered that such party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing

of good and sufficient cause judgment may be rendered as by default.

(b) If no evidence other than Patent Office records is offered by the party in the position of plaintiff, any party in position of defendant, without waiving his right to offer evidence in the event the motion is denied, may move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall be allowed fifteen days after service of the motion to file his argument in opposition to the motion. Judgment may be rendered against the party in position of plaintiff, or the Trademark Trial and Appeal Board may decline to render judgment until all the evidence is in. In the latter event, testimony periods will be reset for the party in position of defendant and for rebuttal.

2.133 Amendment of application or registration during proceedings. An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

2.134 Surrender or cancellation of registration. If a registrant involved in a proceeding applies to cancel his registration under section 7(d) of the act without first obtaining the written consent thereto of the adverse party, judgment shall be entered against him.

2.135 Abandonment of application or mark. If, in a proceeding an applicant files a written abandonment of the application or of the mark without the consent thereto of the adverse party, judgment shall be entered against such applicant.

2.136 Status of application on termination of proceeding. On termination of a proceeding involving an application, the application, if the judgment is not adverse, returns to the status it had before the institution of the proceeding. If the judgment is adverse to the applicant, the application stands refused without further action and all proceedings thereon are considered terminated.

APPEALS

2.141 Ex parte appeals from the Examiner of Trademarks. Every applicant for the registration of a mark may, upon final refusal by the Examiner of Trademarks, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee. A second refusal on the same grounds may be considered as final by the applicant for the purpose of appeal.

2.142 Time and manner of ex parte appeals. (a) Such appeal must be taken within six months from the date of final refusal or from the date of the action from which appeal is taken. Appeal is taken simply by filing a notice of appeal and payment of the appeal fee.

(b) The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The Examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to appellant's brief, supplying a copy to the appellant. The appellant may file a reply brief within twenty days from the date of such answer.

(c) If the appellant desires an oral hearing, he should so state by a separate notice filed not later than his brief; and due notice of the time for such hearing will be given. Oral argument will be limited to one-half hour unless otherwise permitted. If no request for oral hearing is made, the appeal will be considered on brief.

(d) Applications which have been considered and decided on appeal will not be reopened except by order of the Commissioner, and then only for consideration of matters not already adjudicated, sufficient cause being shown.

2.144 Reconsideration of decision on appeal. Any request or petition for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the decision.

2.145 Appeal to court and civil action.

(a) *Appeal to U.S. Court of Customs and Patent Appeals.* An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit under section 8 of the act or who has filed an application for renewal and is dissatisfied with the decision of the Commissioner (rules 2.165, 2.184), may appeal to the United States Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (1) In the Patent Office give notice to the Commissioner and file the reasons of appeal (see subsections (b) and (d)); (2) in the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the reasons of appeal, and pay the fee for appeal, as provided by the rules of the court. The transcript will be transmitted to the court by the Patent Office on order of and at the expense of the appellant.

(b) *Notice and reasons of appeal.* (1) When an appeal is taken to the U.S. Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and file in the Patent Office, within the time specified in subsection (d), his reasons of appeal specifically set forth in writing.

(2) In inter partes proceedings, the notice and reasons must be served as provided in rule 2.119.

(c) *Civil action.* (1) Any person who may appeal to the U.S. Court of Customs and Patent Appeals (subsection (a)), may have remedy by civil action under section 21(b) of the act. Such civil action must be commenced within the time specified in subsection (d).

(2) If an applicant or registrant in an ex parte case has taken an appeal to the U.S. Court of Customs and Patent Appeals, he thereby waives his right to proceed under section 21(b) of the act.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals, and any adverse party to the case shall, within twenty days after the appellant shall have filed notice of the appeal to the court (subsection (b)), file notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) of the act, certified copies of such notices will be transmitted to the U.S. Court of Customs and Patent Appeals for such action as may be necessary. The notice of election must be served as provided in rule 2.119.

(d) *Time for appeal or civil action.* The time for filing the notice and reasons of appeal to the U.S. Court of Customs and Patent Appeals (subsection (b)) or for commencing a civil action (subsection (c)) is sixty days from the date of the decision of the Trademark Trial and Appeal Board or the Commissioner, as the case may be. If a petition for rehearing or reconsideration is filed within thirty days after the date of the decision, the time is extended to thirty days after action on the petition. No petition for rehearing or reconsideration filed outside the time specified herein after such decision, nor any proceedings on such petition shall operate to extend the period of sixty days hereinabove provided. The times specified herein are calendar days. If the last day of time specified for appeal, or commencing a civil action falls on a Saturday, Sunday or legal holiday, the time is extended to the next day which is neither a Saturday, Sunday nor a holiday. If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Customs and Patent Appeals and an adverse party has filed notice under section 21(a)(1) of the act that he elects to have all further proceedings conducted under section 21(b) of the act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the act.

PETITIONS AND ACTION BY THE COMMISSIONER

2.146 **Petition to the Commissioner.** (a) Petition may be taken to the Commissioner (1) from any repeated action or requirement of the Examiner of Trademarks, not subject to appeal under rule 2.14; (2) in the ex parte prosecution of an application; (3) in cases in which the statute or the rules specify that the matter is to be determined

directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits (and exhibits, if any) must accompany the petition.

(c) An oral hearing will not be held except when considered necessary by the Commissioner.

(d) The mere filing of a petition will not stay the period for replying to an Examiner's action, nor stay other proceedings.

(e) Authority to act on a petition may, when appropriate, be delegated by the Commissioner.

(f) No fee is required for a petition to the Commissioner.

2.147 Cases not specifically defined. All cases not specifically defined and provided for by the rules in this part will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

2.148 Commissioner may suspend certain rules. In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Commissioner.

CERTIFICATE

2.151 Certificate. When the requirements of the law and of the rules have been complied with, and the Patent Office has adjudged a mark registrable, a certificate will be issued to the effect that the applicant has complied with the law and that he is entitled to registration of his mark on the Principal Register or on the Supplemental Register, as the case may be. The certificate will state the date on which the application for registration was filed in the Patent Office, the act under which the mark is registered, the date of issue and the number of the certificate. Attached to the certificate and forming a part thereof will be a reproduction of the mark and pertinent data from the application. A notice of the affidavit requirement of section 8(a) of the act (rule 2.161) will be printed on the certificate.

PUBLICATION OF MARKS REGISTERED UNDER 1905 ACT

AUTHORITY NOTE: Rules 2.153 to 2.156 interpret or apply sec. 12, 60 Stat. 432, 15 U.S.C. 1062.

2.153 Publication requirements. A registrant of a mark registered under the provisions of the acts of 1881 or 1905 may, at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946. An order for a title report for Office use (including an abstract of title) shall accompany the affidavit.

2.154 Publication in Official Gazette. A notice of the claim to the benefits under the act of 1946 and a reproduction of the mark will then be published in the Official Gazette as soon as practicable. The published mark will retain its original registration number.

2.155 Notice of publication. A notice of such publication of the mark and of the requirement for the affidavit specified in section 8(c) of the act (rule 2.161) will be sent to the registrant.

2.156 Not subject to opposition; subject to cancellation. The published mark is not subject to opposition on such publication in the Official Gazette, but is subject to petitions to cancel as specified in rule 2.111 and to cancellation for failure to file the affidavit specified in rule 2.161.

REREGISTRATION OF MARKS REGISTERED UNDER PRIOR ACTS

2.158 Reregistration of marks registered under acts of 1881, 1905, and 1920. Trademarks registered under the act of 1881, the act of 1905 or the act of 1920 may be reregistered under the act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the act of 1946. See rule 2.26 for use of old drawing.

CANCELLATION FOR FAILURE TO FILE AFFIDAVIT DURING SIXTH YEAR

AUTHORITY NOTE: Rules 2.161 to 2.165 interpret or apply sec. 8, 60 Stat. 432, 15 U.S.C. 1058.

2.161 Cancellation for failure to file affidavit during sixth year. Any registration under the provisions of the act of 1946 and any registration published under the provisions of section 12(c) of the

act (rule 2.153) shall be cancelled at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

2.162 Requirements for affidavit. (a) The affidavit required by rule 2.161 must:

(1) Be executed by the registrant after expiration of the five-year period following the date of registration or publication under section 12(c);

(2) Identify the certificate of registration by the certificate number and date of registration;

(3) Recite sufficient facts to show that the mark described in the registration is still in use, specifying the nature of such use, or recite sufficient facts to show that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(4) Be accompanied by an order for a title report for Office use (or an abstract of title).

(b) A specimen or facsimile showing the mark as currently used should be submitted with and referred to in the affidavit.

2.163 Notice to registrant. If no affidavit is filed within a reasonable time prior to expiration of the sixth year, the registrant may be notified that the registration will be cancelled by the Commissioner at the end of such sixth year unless the owner files in the Patent Office the affidavit of use or excusable nonuse required by section 8. Failure to notify the registrant does not, however, relieve the registrant of the responsibility of filing the affidavit within the period required by statute.

2.164 Acknowledgment of receipt of affidavit. The registrant will be notified by the Examiner of Trademarks of the receipt of the affidavit and, if satisfactory, of its acceptance.

2.165 Reconsideration of affidavit. (a) If the affidavit is insufficient, the registrant will be notified of the reasons by the Examiner. Reconsideration of such refusal may be requested within six months from the date of the mailing of the notice. The request for reconsideration must state the reasons therefor; a supplemental or substitute affidavit required by section 8 of the act cannot be considered unless it is received before the expiration of six years from the date of the registration, or from the date of publication under section 12(c).

(b) If the registrant is dissatisfied with the action of the Examiner holding the affidavit insufficient, he may request the Commissioner to review the action under rule 2.146. The decision of the Commissioner

on such a request constitutes the final action of the Patent Office. If there is no review by the Commissioner, the Commissioner will notify the registrant of the insufficiency of the affidavit after the expiration of the sixth year, which notice will constitute such final action. See rule 2.145 for appeal to or review by court.

2.166 Time of cancellation. If no affidavit is filed within the sixth year following registration or publication under section 12(c) of the act, the registration will be cancelled forthwith by the Commissioner. If the affidavit is filed but is refused, cancellation of the registration will be withheld pending further proceedings.

AFFIDAVIT UNDER SECTION 15

2.167 Affidavit under section 15. The affidavit provided by section 15 of the act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the act of 1882 or 1905 and published under section 12(c) of the act (rule 2.153) must contain:

- (a) Be signed by the registrant;
- (b) Identify the certificate of registration by the certificate number and date of registration;
- (c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years subsequent to the date of registration or date of publication under section 12(c) of the act, and is still in use in commerce, specifying the nature of such commerce;
- (d) Specify that there has been no final decision adverse to the registrant's claim of ownership of such mark for such goods or services or to registrant's right to register the same or to keep the same on the register;
- (e) Specify that there is no proceeding involving said rights pending in the Patent Office or in a court and not finally disposed of;
- (f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c).

The registrant will be notified of the receipt of the affidavit.
(Sec. 15, 60 Stat. 433; 15 U.S.C. 1065)

2.168 Combined with other affidavits. (a) The affidavit filed under section 15 of the act may also be used as the affidavit required by section 8, provided it also complies with the requirements and is filed within the time limit specified in rules 2.161 and 2.162.

(b) In appropriate circumstances the affidavit filed under section 15 of the act may be combined with the affidavit required for renewal of a registration (see rule 2.183).

CORRECTION, DISCLAIMER, SURRENDER, ETC.

2.171 New certificate on change of ownership. In case of change of ownership of a registered mark, upon request of the assignee, a new certificate of registration may be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Patent Office, and the request for the new certificate must be signed by the assignee and accompanied by the required fee and by an order for title report for Office use (or abstract of title). The original certificate of registration, if available, must also be submitted.

(Sec. 7, 60 Stat. 430 as amended ; 15 U.S.C. 1057)

2.172 Surrender for cancellation. Upon application by the registrant, the Commissioner may permit any registration to be surrendered for cancellation. Application for such action must be signed by the registrant and must be accompanied by an order for a title report for Office use (or an abstract of title) and, if not lost or destroyed, by the original certificate of registration.

(Sec. 7, 60 Stat. 430 as amended ; 15 U.S.C. 1057)

2.173 Amendment and disclaimer in part. (a) Upon application by the registrant, the Commissioner may permit any registration to be amended or any registered mark to be disclaimed in part. Application for such action must specify the amendment or disclaimer and be signed and verified by the registrant, and must be accompanied by the required fee and by an order for a title report for Office use (or an abstract of title). If the amendment involves a change in the mark, new specimens showing the mark as used in connection with the goods or services, and a new drawing of the amended mark must be submitted. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon and in the records of the Office. The registration when so amended must still contain registrable matter and the mark as amended must be registrable as a whole, and such amendment or disclaimer must not involve such changes in the registration as to alter materially the character of the mark.

(b) Changes in the identification of goods other than in the nature of deletions will not be permitted except under the provisions of rule 2.175. No amendment seeking the elimination of a disclaimer will be permitted.

(c) A printed copy of the amendment or disclaimer shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430 as amended ; 15 U.S.C. 1057)

2.174 Correction of Office mistake. Whenever a material mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake, signed by the Commissioner or by an employee designated by the Commissioner and sealed with the seal of the Patent Office, shall be issued without charge and recorded, and a printed copy thereof shall be attached to each printed copy of the registration certificate. Such corrected certificate shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must be submitted in order that the Commissioner may make appropriate entry thereon.

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

2.175 Correction of mistake by registrant. (a) Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner may issue a certificate of correction, in his discretion, a new certificate upon the payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must specify the mistake for which correction is sought and the manner in which it arose, show that it occurred in good faith, be signed and verified by the applicant, and be accompanied by the required fee and by an order for a title report for Office use (or an abstract of title). The certificate of registration, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon.

(c) A printed copy of the certificate of correction shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430 as amended; 15 U.S.C. 1057)

2.176 Consideration of above matters. The matters in rules 2.174 to 2.175 will be considered in the first instance by the Examiner of Trademarks. If the action of the Examiner of Trademarks is adverse, registrant may request the Commissioner to review the action under rule 2.146. If response to an adverse action of the Examiner is not made by the registrant within six months, the matter will be considered abandoned.

TERM AND RENEWAL

AUTHORITY NOTE: Rules 2.181 to 2.184 interpret or apply sec. 9, 60 Stat. 431; 15 U.S.C. 1059.

2.181 Term of original registrations and renewals. (a) Registrations issued under the act of 1946, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years, and may be renewed for periods of twenty years from the expiring period unless previously cancelled or surrendered.

(b) Registrations issued under the acts of 1905 and 1881 remain in force for their unexpired terms and may be renewed in the same manner as registrations under the act of 1946.

(c) Registrations issued under the act of 1920 cannot be renewed unless renewal is required to support foreign registrations and in such case may be renewed on the Supplemental Register in the same manner as registrations under the act of 1946.

2.182 Period within which application for renewal must be filed. An application for renewal may be filed by the registrant at any time within six months before the expiration of the period for which the certificate of registration was issued or renewed, or it may be filed within three months after such expiration on payment of the additional fee required.

2.183 Requirements of application for renewal. (a) The application for renewal must include a verified statement by the registrant setting forth the goods or services recited in the registration on or in connection with which the mark is still in use in commerce, specifying the nature of such commerce. This statement must be executed not more than six months before the expiration of the registration and be accompanied by:

(1) A specimen or facsimile showing current use of the mark.

(2) The required fee including an additional fee in the case of a delayed application for renewal.

(b) The verified statement, specimen or facsimile and the fee must be filed within the period prescribed for applying for renewal. If defective or insufficient, they cannot be completed after the period for applying for renewal has passed; if completed after the initial six month period has expired but before the expiration of the three month delay period, the application can be considered only as a delayed application for renewal.

(c) If the mark is not in use in commerce at the time of filing of the verified statement, sufficient facts must be recited to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(d) The application for renewal must also include:

(1) An order for a title report for Office use (or an abstract of title).

(2) If the applicant is not domiciled in the United States, the designation of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark.

(3) If the mark is registered under the act of 1920, a verified showing that renewal is required to support foreign registrations.

2.184 Refusal of renewal. (a) If the application for renewal incomplete or defective, the renewal will be refused by the Examiner of Trademarks. The application may be completed or amended in response to a refusal, subject to the provisions of rules 2.62 and 2.183.

(b) If the registrant is dissatisfied with the action of the Examiner considering the application for renewal incomplete or defective, he may request the Commissioner to review the action, under rule 2.14. If response to an adverse action of the Examiner is not made within six months, the application for renewal will be considered abandoned.

ASSIGNMENT OF MARKS

2.185 Requirements for assignments. (a) Assignments under section 10 of the act of registered marks, or marks for which an application for registration has been filed, will be recorded in the Patent Office. Other instruments which may relate to such marks may be recorded in the discretion of the Commissioner. No assignment will be recorded, except as may be ordered by the Commissioner, unless it has been executed and unless:

(1) The certificate of registration is identified in the assignment by the certificate number (the date of registration should also be given), or, the application for registration shall have been first filed in the Patent Office and the application is identified in the assignment by serial number (the date of filing should also be given);

(2) It is in the English language or, if not in the English language, accompanied by a sworn translation;

(3) The fee for recording is received; and

(4) An appointment of a resident agent is made in case the assignee is not domiciled in the United States. The appointment must be separate from the assignment and there must be a separate appointment for each registration or application assigned in one instrument.

(b) The address of the assignee should be recited in the assignment, otherwise it must be given in a separate paper.

(c) The date of record of the assignment is the date of the receipt of the assignment at the Patent Office in proper form and accompanied by the full fee for recording.

(Sec. 10, 60 Stat. 431; 15 U.S.C. 1060)

2.186 Action may be taken by assignee of record. Any action which may or must be taken by a registrant or applicant may be taken by the assignee, provided the assignment has been recorded.

2.187 **Certificate of registration may issue to assignee.** The certificate of registration may be issued to the assignee of the applicant if the assignment is recorded in the Patent Office at least ten days before the application is allowed, and the address of the assignee appears in the record. See rule 2.82.

AMENDMENT OF RULES

2.189 **Amendments to rules.** (a) All amendments to this part will be published in the *Official Gazette* and in the Federal Register.

(b) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the Federal Register and in the *Official Gazette*. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof. Oral hearings may be held at the discretion of the Commissioner.

FORMS FOR TRADEMARK CASES

The following forms illustrate the manner of preparing applications for registration of marks and various papers in trademark cases, to be filed in the Patent Office. Applicants and other parties will find their business facilitated by following them. These forms should be used in cases to which they are applicable. A sufficient number of representative forms are given which, with the variations indicated by the notes, should take care of all the usual situations. In special situations such alterations as the circumstances may render necessary may be made provided they do not depart from the requirements of the rules or the statute. Before using any forms the pertinent rules and sections of the statute should be studied carefully.

- 4.1 Trademark application by an individual ; Principal Register.
- 4.2 Power of attorney accompanying application.
- 4.3 Authorization of agent accompanying application.
- 4.4 Appointment of domestic representative accompanying application.
- 4.5 Trademark application by a firm ; Principal Register.
- 4.6 Trademark application by a corporation ; Principal Register.
- 4.7 Service mark application ; Principal Register.
- 4.8 Collective mark application ; Principal Register.
- 4.9 Certification mark application ; Principal Register.
- 4.10 Application based on concurrent use ; Principal Register.
- 4.11 Application to register on Supplemental Register.
- 4.12 (deleted)
- 4.13 Application for renewal.
- 4.14 Affidavit for publication under section 12 (c).
- 4.15 Affidavit required by section 8.
- 4.16 Affidavit under section 15.
- 4.17 Notice of opposition.
- 4.18 Petition to cancel a registration.
- 4.19 Ex parte appeal from Examiner of Trademarks.
- 4.21 Assignment of application.
- 4.22 Assignment of registration.

AUTHORITY: Rules 4.1 to 4.22 issued under sec. 41, 60 Stat. 440; 15 U.S.C. 1123. Interpret or apply sec. 1, 60 Stat. 427; 15 U.S.C. 1051.

4.1 Trademark application by an individual; Principal Register.

Mark -----
(Identify the mark)

Class No. -----
(If known)

To the COMMISSIONER OF PATENTS:

(Name of applicant and trade style, if any)

(Business address, including street, city and State)

(Residence address, including street, city and State)

(Citizenship of applicant)

The above identified applicant has adopted and is using the trademark shown in the accompanying drawing (1) for

(Common, usual or ordinary name of goods)
and requests that said mark be registered in the United States Patent Office on the Principal Register established by the act of July 5, 1946.

The trademark was first used on the goods (2) on -----; was first
(Date)
used in (3) ----- commerce on -----
(Type of commerce) (Date)

and is now in use in such commerce. (4)

The mark is used by applying it to -----
(5) and five specimens showing the mark as actually used are presented herewith
State of ----- } ss.
County of ----- }

-----, being sworn to by -----
(Name of applicant)

states that: he believes himself to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true.

(Signature of applicant)
Subscribed and sworn to before me this -----
day of -----, 19-----

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3) (7)

NOTES: (1) If registration is sought for a word or numeral mark not depicted in any special form, the drawing may be the mark typed in capital letters on letter-size bond paper; otherwise, the drawing shall comply with rule 2.52.

(2) If more than one item of goods is set forth and the dates given apply to only one of the items listed, insert the name of the item to which the dates apply.

(3) Type of commerce should be specified as "interstate," "Territorial," "foreign," or such other specified type of commerce as may be lawfully regulated by Congress. Foreign applicants relying upon use must specify "commerce with

the United States." (Foreign applicants relying on a home registration or entitled to a right of priority may omit this sentence)

(4) If the mark is other than a coined, arbitrary or fanciful mark which is claimed to have acquired a secondary meaning, insert whichever of the following paragraphs is applicable:

(a) The mark has become distinctive of applicant's goods as a result of substantially exclusive and continuous use in _____ commerce for the five years next preceding the date of filing of this application.

(b) The mark has become distinctive of applicant's goods as evidenced by the showing submitted separately.

(5) Insert the manner or method of using the mark with the goods, i.e., "the goods," "the containers for the goods," "display associated with the goods," "tags or labels affixed to the goods," or such other appropriate method as may be used.

(6) The notary's seal or stamp or other evidence of authority in the jurisdiction of execution must be affixed.

(7) If the applicant is not domiciled in the United States, a domestic representative must be appointed. See rule 4.4.

4.2 Power of attorney accompanying application.

Applicant hereby appoints _____ (8)
_____ member of the bar of the
_____ (Address)

State of _____ to prosecute this application to register, to transact all business in the Patent Office in connection therewith, and to receive the certificate of registration.

NOTE: (8) If the name of the law firm is used, the names of the members of the firm and their States of admission to the bar shall be set forth.

4.3 Authorization of agent accompanying application.

Applicant hereby appoints _____ (9)
with offices at _____
_____ (Street, city and State)

Patent Office Registration No. _____ to prosecute this application to register, to transact all business in connection therewith, and to receive the certificate of registration.

NOTE: (9) Authorization of an agent must be an individual authorization, and names of firms of agents will not be recognized.

4.4 Appointment of domestic representative (10) accompanying application.

_____, whose postal
address is _____
_____ (Name of representative)

_____, is
_____ (Street, city and State)
hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

NOTE: (10) The appointment of a domestic representative must be separate from a power of attorney or authorization of agent.

4.5 Trademark application by a firm; Principal Register.

Mark -----

(Identify the mark)

Class No. -----

(If known)

To the COMMISSIONER OF PATENTS :

(Firm name and names of members comprising firm)

(Business address, including street, city and State)

(Domicile of firm)

(Citizenship of members of firm)

(Body of application form is same as rule 4.1)

State of ----- } ss.
County of ----- }

-----, being sworn, states that

(Name of member of firm)

he is a member of the applicant firm ; he believes said firm to be the owner of said mark sought to be registered ; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion or to cause mistake, or to deceive ; and the facts set forth in this application are true.

(Signature of member of firm)

Subscribed and sworn to before me this ----- day,
-----, 19-----.

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

4.6 Trademark application by a corporation; Principal Register.

Mark -----

(Identify the mark)

Class No. -----

(If known)

To the COMMISSIONER OF PATENTS :

(Corporate name and State or country of incorporation) (11)

(Business address, including street, city and State)

(Situs of corporation, including street, city and State)

(Body of application form is same as rule 4.1)

State of ----- }
County of ----- } ss.

-----, being sworn,
(Name of corporate officer)

states that: he is -----
(Official title)

of applicant corporation and is authorized to execute this affidavit on behalf of said corporation; he believes said corporation to be the owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true.

(Corporate name)

By -----

(Signature and official title)

Subscribed and sworn to before me this ----- day of -----

-----, 19--.

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTE: (11) If applicant is an association or other collective group, the word "association" or other appropriate designation should be substituted for "corporation."

4.7 Service mark application; Principal Register.

Mark -----
(Identify the mark)

Class No. -----
(If known)

To the COMMISSIONER OF PATENTS:

(Insert appropriate identification of applicant in accordance with rule 4.1, 4.2 or 4.6)

The above identified applicant has adopted and is using the service mark shown in the accompanying drawing (12) for -----
(Common, usual or ordinary name of service)

and requests that said mark be registered in the United States Patent Office in the Principal Register established by the act of July 5, 1946.

The service mark was first used in connection with the services on -----
(Date)

-----; was first used in the sale or advertising of services rendered in
(3) ----- commerce on -----; and is now in use
(Type of commerce) (Date)
in such commerce.

The mark is used by -----

(State method of using the mark in connection with the services)
and five ----- (13) showing the mark as actually used
are presented herewith.

State of ----- } ss.
County of ----- }

(Insert appropriate verification from rule 4.1, 4.5 or 4.6, changing the words "goods" to "services.")

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTES: (12) See Note (1), and if drawing is not practicable, insert description of the mark instead of reference to the drawing.

(13) Insert "specimens" or "facsimiles," or state the nature of the representation of the mark which is furnished.

4.8 Collective mark application; Principal Register.

Mark -----
(Identify the mark)
Class No. -----
(If known)

To the COMMISSIONER OF PATENTS:

(Insert identification of applicant in accordance with rule 4.6, changing "corporation" to "association," "cooperative," or other appropriate designation of the collective group or organization.)

The above identified applicant has adopted and is exercising legitimate control over the use of the collective mark shown in the accompanying drawing (1) for -----

(Common, usual or ordinary name of goods or services)

to indicate -----

(14) and requests that said mark be registered in the United States Patent Office on the Principal Register established by the act of July 5, 1946.

The collective mark was first used on the -----

(Insert "goods" or "services")

by members of applicant on -----; was first
(Date)

used by said members in ----- (3)

(Type of commerce)

commerce on -----; and is now in use in such
(Date)
commerce.

The mark is used by applying it to ----- (5)
and five specimens (13) of the mark as actually used are presented herewith.

State of ----- }
County of ----- } ss.

(Insert verification of rule 4.6, changing "corporation" to "association", "cooperative," or other appropriate identification of the collective group or organization.)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTE: (14) Insert "the goods of the members of applicant," "the services rendered by the members of applicant," "membership in applicant," or other appropriate statement.

4.9 Certification mark application; Principal Register.

Mark -----
(Identify the mark)

Class No. -----
(If known)

To the COMMISSIONER OF PATENTS:

(Insert appropriate identification of applicant in accordance with rule 4.1, 4.5 or 4.6.)

The above identified applicant has adopted and is exercising legitimate control over the use of the certification mark shown in the accompanying drawing (12) for -----

(Insert "goods" or "services")

and requests that said mark be registered in the United States Patent Office of the Principal Register established by the act of July 5, 1946.

The certification mark is used by persons authorized by applicant to certify -----; (15) said mark was first used under the authority of applicant on -----; was first used in

(Date)

commerce on -----

(Type of commerce)

(Date)

and is now in use in such commerce.

The mark is used by applying it to -----, (5) and five specimens showing the mark as actually used are presented herewith.

Applicant is not engaged in the production or marketing of any goods or services to which the mark is applied.

State of ----- } ss.
County of ----- }

(Insert appropriate verification from rule 4.1, 4.5 or 4.6 and add after the word "association" the words "other than those authorized by applicant.")

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTE: (15) Insert the appropriate statement that the mark certifies region or other origin; material; mode of manufacture; quality; accuracy or other characteristic of the goods; or that the work or labor on the goods or in the performance of the services was performed by members of applicant.

4.10 Application based on concurrent use; Principal Register.

Mark -----
(Identify the mark)
Class No. -----
(If known)

TO THE COMMISSIONER OF PATENTS:

(Insert appropriate identification of applicant in accordance with rules 4.1, 4.5 or 4.6.)

Use rule 4.1, and add at the end of the first paragraph: "for the area comprising -----";

(List States for which registration is sought)

and add as final paragraph of application:

"The following exception(s) to applicant's right to exclusive use are:

By -----, doing business
at -----, who is using the mark

(Identify mark and Reg. No. or Ser. No., if any)

for -----
(Common, usual, or ordinary name of goods or services)

in the States of -----

by applying the mark to ----- (5)

from -----

(Earliest date of such use)

to the present."

(Insert appropriate verification in rules 4.1, 4.5 and 4.6 and add after the word "association" the words "other than (are) (is) specified in the application.")

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

4.11 Application to register on Supplemental Register.

Mark -----
(Identify the mark)

Class No. -----
(If known)

To the COMMISSIONER OF PATENTS :

(Insert appropriate identification of applicant in accordance with rules 4.1, 4.5 or 4.6.)

For application for trademark registration (16), use rules 4.1, 4.5 or 4.6, whichever is appropriate, changing the word "Principal" to "Supplemental," and adding a final paragraph in the application as follows :

"The mark sought to be registered has been in lawful use in -----
----- commerce in con
(Type of commerce)

nection with the goods for the year preceding the date of filing of this application." (17)

State of ----- }
County of ----- } ss.

(Insert appropriate verification from rules 4.1, 4.5 or 4.6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTES : (16) Service mark, collective mark and certification mark application on the Supplemental Register should conform to rules 4.7, 4.8 or 4.9, whichever is applicable, with the change and addition indicated herein.

(17) If the mark has not been in use for the year next preceding the filing date, and registration in the United States is required as a basis for obtaining foreign protection of the mark, the following statement must be substituted for the last sentence : The mark sought to be registered is now in use in ----- commerce and domestic registration is required as a basis for foreign protection of the mark.

In this instance applicant will be required to make a showing that U.S. registration is required as a basis of foreign protection of the mark.

4.13 Application for renewal.

Mark _____
(Identify the mark)
Reg. No. _____
Class No. _____

To the COMMISSIONER OF PATENTS:

(Insert appropriate identification of registrant in accordance with rule 4.1, 4.5 or 4.6.)

The above identified registrant requests that Registration No. _____ granted to _____

(Name of original registrant)
on _____ which he now owns as evidenced
(Date of issuance)

by the accompanying title report (1) be renewed in accordance with the provisions of section 9 of the act of July 5, 1946.

The renewal fee is presented herewith. (2)

State of _____ } ss.
County of _____ }

(Name of registrant or person authorized to sign for it)
being sworn, states that _____

(Insert "he" or name of registrant)
owns Registration No. _____; that the mark shown therein is in use in
(Type of commerce) (3) commerce on each of the following
goods recited in the registration _____, the attached specimen (or fac-
simile) showing the mark as currently used. (5)

(Signature, and if a corporation or other organization, the official title)
Subscribed and sworn to before me this _____ day of
_____, 19____.

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3) (4)

NOTES: (1) An order for title report, and the fee of \$1.00 therefor must accompany the application for renewal, and if record title is not in the applicant for renewal, satisfactory showing of ownership must accompany the application.

(2) The fee for renewal sought prior to expiration is \$25.00; and for delayed renewal filed within three months after expiration, an additional \$5.00.

(3) Type of commerce should be specified as "interstate," "foreign," "Territorial," or such other specified type of commerce as may be regulated by Congress. Foreign registrants must specify: "commerce with the United States."

(4) If applicant for renewal is not domiciled in the United States, a domestic representative must be designated. See rule 4.4.

(5) If the mark is not in use in commerce at the time of filing the application for renewal, but there is no intention to abandon the mark, sufficient facts must be recited to show that the nonuse is due to special circumstances which excuse the nonuse.

4.14 Affidavit for publication under section 12(c).

Mark -----

(Identify the mark)

Reg. No. -----

Date of issue -----

To: -----

(Name of original registrant)

State of -----
County of ----- } ss.

(Name of registrant or person authorized to sign for it)

being sworn, states that -----

(Insert "he" or name of registrant)

owns Registration No. -----, as evidenced by the accompanying title report

(1) that said registration is now in force; that the mark shown therein is in use
in ----- (2) commerce on each of the following

(Type of commerce)

goods recited in the registration -----; and that the
benefits of the act of July 5, 1946 are hereby claimed for said registration.

(Signature, and if a corporation or other
organization, the official title)

(JURAT) (3)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTE: (1) An order for title report and the fee of \$1.00 therefor must accompany the affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(2) Type of commerce should be specified as "interstate," "Territorial," "foreign," or such other specified type of commerce as may be lawfully regulated by Congress. Foreign registrants must specify "commerce with the United States."

(3) Use jurat from rule 4.1.

4.15 Affidavit required by section 8.

Mark _____
 (Identify the mark)
 Reg. No. _____
 Class No. _____
 State of _____
 County of _____ } ss.

 (Name of registrant or person authorized to sign for it)
 being sworn, states that _____
 owns Registration No. _____ issued _____
 (Insert "he" or name of registrant)

 (Date)
 (1) as evidenced by the accompanying title report; (2) and that the mark
 shown therein is still in use (3) as evidenced by _____ (4)

 (Signature, and if a corporation or other
 organization, the official title)
 (JURAT) (5)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTES: (1) If the registration issued under a prior act and has been published under section 12(c), add: "and published under section 12(c) on _____"
 (Date)

(2) An order for title report and the fee of \$1.00 therefor must accompany the affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(3) If the mark is not in use at the time of filing the affidavit, but there is no intention to abandon the mark, sufficient facts must be recited to show that the nonuse is due to special circumstances which excuse the nonuse.

(4) Insert "the attached specimen showing the mark as currently used;" or recite sufficient facts as to sales or advertising or both, as to show that the mark is in current use.

(5) Use jurat from rule 4.1.

4.16 Affidavit under section 15.

Mark _____
 (Identify the mark)
 Reg. No. _____
 Class No. _____

State of _____ }
 County of _____ } ss.

 (Name of registrant or person authorized to sign for it)
 being sworn, states that _____

 (Insert "he" or name of registrant)
 owns Registration No. _____ issued _____ (Date)
 (1) as evidenced by the accompanying title report (2); that the mark shown therein has been in continuous use in _____ (Type of commerce)
 _____ (3) commerce for five consecutive years from _____
 _____ (4) to the present on each of the following goods recited
 _____ (Date)
 in the registration: _____; that said mark is still in use in _____
 (List the goods) (Type of commerce)
 commerce; that there has been no final decision adverse to registrant's claim of ownership of said mark to (his) (its) right to register the same or maintain it on the register, and that there is no proceeding involving any of said rights pending and not disposed of either in the Patent Office or in the courts.

 (Signature, and if a corporation or other organization, the official title)

(JURAT) (5)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See rules 4.2 and 4.3)

NOTES: (a) This form may be used as a combined affidavit under section 15, provided it contains sufficient facts as to sales or advertising, or both, as to show that the mark is in current use or is accompanied by a verified statement showing current use of the mark.

(1) If the registration issued under a prior act and has been published under section 12(c), add: "and published under section 12(c) on _____ (Date)"

(2) An order for title report and the fee of \$1.00 therefor must accompany affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(3) Type of commerce must be specified as "interstate," "Territorial," "foreign," or such other commerce as may lawfully be regulated by Congress. Foreign registrants must specify "commerce with the United States."

(4) The beginning of the five year period immediately preceding the date of the affidavit, provided such date is subsequent to the registration under the act of 1946 or publication under section 12(c), as the case may be.

(5) Use jurat from rule 4.1.

4.17 Notice of opposition in the United States Patent Office.

In the matter of application Serial No. _____.

Published in the *Official Gazette* on _____.

(Date)

(Name of opposer)

v.

(Name of applicant)

Opposition No. _____

(To be inserted by Patent Office)

_____, a(n) _____,
(Name of opposer) (Identity of opposer)

(1) located and doing business at _____
(Street, city, and State)

believes that it will be damaged by registration of the mark shown in Serial No. _____, and hereby opposes the same.

As grounds of opposition, it is alleged that:

(Numbered paragraphs should state the grounds and recite facts tending to show why opposer believes it will be damaged.)

(Name of corporation or other organization, if any)

By _____
(Signature and official title, if any)

State of _____ }
County of _____ } ss.

(Name of opposer or person authorized to sign for it)

being sworn, states that he is the (person named in the foregoing notice of opposition) _____

(Official title)

of _____; that
(Name of firm, corporation, or other organization)

he has read and signed the notice and knows the contents thereof; and that the allegations are true, except as to the matters stated therein to be upon information and belief, and as to those matters he believes them to be true.

(Signature)

Subscribed and sworn to before me this _____ day of _____, 19__.

(Notary Public) (6)

POWER OF ATTORNEY

NOTE: (1) If an individual, state: "an individual trading as _____."
If a firm, state: "a firm composed of _____." If a corporation, association, or other organization, state "a corporation (or other organization) organized and existing under the laws of _____."

4.18 Petition to cancel a registration in the United States Patent Office.

In the matter of Registration No. -----

Date of Issue -----

(Name of petitioner)

v.

(Name of registrant)

Cancellation No. -----

(To be inserted by Patent Office)

(Name of petitioner)

a(n) -----

(Identity of petitioner)

(1) located and doing business at -----

(Street, city, and State)

believes that it is or will be damaged by Registration No. -----

and hereby petitions to cancel the same.

As grounds therefor, it is alleged that:

(Numbered paragraphs should state the grounds and recite facts tending to
shown why petitioner believes that it is or will be damaged.)

(Name of corporation or other organization, if any)

By -----

(Signature and official title, if any)

(Insert affidavit in accordance with rule 4.17.)

POWER OF ATTORNEY

NOTE: (1) See note (1) in rule 4.17.

4.19 Ex parte appeal from Examiner of Trademarks in the United States Patent Office.

(Name of applicant)

(Serial number of application)

To the TRADEMARK TRIAL AND APPEAL BOARD:

Applicant hereby appeals to the Trademark Trial and Appeal Board from the
decision of the Examiner of Trademarks refusing registration.

(Signature)

4.21 Assignment of application.

State of _____
County of _____ } ss.

Whereas _____, of
(Name of assignor)

(Street, city, and State)

has adopted and is using a mark for which he has filed application in the United States Patent Office for registration, Serial No. _____; and

Whereas _____, of
(Name of assignee)

(Street, city, and State)

is desirous of acquiring said mark;

Now, therefore, for good and valuable consideration, receipt of which is hereby acknowledged, said _____

(Name of assignor)

does hereby assign unto the said _____

(Name of assignee)

all rights, title and interest in and to the said mark, together with the good will of the business symbolized by the mark, and the application for registration thereof.

The Commissioner of Patents is requested to issue the certificate of registration to said assignee. (1)

(Name of assignor)

By _____

(Official title)

Subscribed and sworn to before me this _____ day of
_____, 19____.

(Notary Public) (6)

NOTE: (1) If the postal address of the assignee is not given either in the instrument or in the accompanying paper, the registration will not issue to the assignee.

4.22 Assignment of registration.

State of _____ } ss.
County of _____ }

Whereas _____
(Name of assignor)

(Street, city, and State)

has adopted, used and is using a mark which is registered in the United States
Patent Office, Registration No. _____, dated _____; and

Whereas _____
(Name of assignee)

(Street, city, and State)

is desirous of acquiring said mark and the registration thereof;

Now, therefore, for good and valuable consideration, receipt of which is hereby
acknowledged, said _____
(Name of assignor)

does hereby assign unto the said _____
(Name of assignee)

all rights, title and interest in and to the said mark, together with the good will
of the business symbolized by the mark, and the registration thereof, No. _____

(Name of assignor)

By _____
(Official title)

Subscribed and sworn to before me this _____ day
_____, 19____.

(Notary Public) (6)

NOTE: If the postal address of the assignee is not given either in the instrument
or in an accompanying paper, recording may be delayed by the Patent Office
pending receipt of such address.

CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

- 6.1 Schedule of classes of goods and services.
- 6.2 Schedule for certification marks.
- 6.3 Schedule for collective membership marks.

AUTHORITY : Rules 6.1 to 6.3 issued under sec. 41, 60 Stat. 440 ; 15 U.S.C. 1123.
Interpret or apply sec. 30, 60 Stat. 436 ; 15 U.S.C. 1112.

6.1 Schedule of classes of goods and services.

GOODS

<i>Class</i>	<i>Title</i>
1	Raw or partly prepared materials.
2	Receptacles.
3	Baggage, animal equipments, portfolios, and pocketbooks.
4	Abrasives and polishing materials.
5	Adhesives.
6	Chemicals and chemical compositions.
7	Cordage.
8	Smokers' articles, not including tobacco products.
9	Explosives, firearms, equipments, and projectiles.
10	Fertilizers.
11	Inks and inking materials.
12	Construction materials.
13	Hardware and plumbing and steam-fitting supplies.
14	Metals and metal castings and forgings.
15	Oils and greases.
16	Protective and decorative coatings.
17	Tobacco products.
18	Medicines and pharmaceutical preparations.
19	Vehicles.
20	Linoleum and oiled cloth.
21	Electrical apparatus, machines, and supplies.
22	Games, toys, and sporting goods.
23	Cutlery, machinery, and tools, and parts thereof.
24	Laundry appliances and machines.
25	Locks and safes.
26	Measuring and scientific appliances.
27	Horological instruments.
28	Jewelry and precious-metal ware.
29	Brooms, brushes, and dusters.

<i>Class</i>	<i>Title</i>
30	Crockery, earthenware, and porcelain.
31	Filters and refrigerators.
32	Furniture and upholstery.
33	Glassware.
34	Heating, lighting, and ventilating apparatus.
35	Belting, hose, machinery packing, and nonmetallic tires.
36	Musical instruments and supplies.
37	Paper and stationery.
38	Prints and publications.
39	Clothing.
40	Fancy goods, furnishings, and notions.
41	Canes, parasols, and umbrellas.
42	Knitted, netted, and textile fabrics, and substitutes therefor.
43	Thread and yarn.
44	Dental, medical, and surgical appliances.
45	Soft drinks and carbonated waters.
46	Foods and ingredients of foods.
47	Wines.
48	Malt beverages and liquors.
49	Distilled alcoholic liquors.
50	Merchandise not otherwise classified.
51	Cosmetics and toilet preparations.
52	Detergents and soaps.

SERVICES

<i>Class</i>	<i>Title</i>
100	Miscellaneous.
101	Advertising and business.
102	Insurance and financial.
103	Construction and repair.
104	Communication.
105	Transportation and storage.
106	Material treatment.
107	Education and entertainment.

6.2 Schedule for certification marks. In the case of certification marks, all goods and services are classified in two classes as follows:

A. Goods.

B. Services.

6.3 Schedule for collective membership marks. All collective membership marks are classified as follows:

200 Collective membership.

TRADEMARK ACT OF 1946, AS AMENDED

Public Law 489, 79th Congress, Chapter 540, approved July 5, 1946;
60 Stat. 427

The headings used for sections and subsections or paragraphs in the following reprint of the Act are not part of the Act but have been added for convenience in using this reprint. Prior trademark statutes may be found in Title 15, Chapter 3, of the U.S. Code and in the Statutes at Large. The present Act forms Chapter 22 of Title 15 of the U.S. Code and the U.S. Code citations have been added at the end of each section and subsection. Amendments made to section 7(a) by the Act of August 17, 1950, Public Law 710, 81st Congress, 64 Stat. 459; to section 21 by the Act of July 19, 1952, Public Law 593, 82d Congress, 66 Stat. 792; to sections 17, 20, 21, 24, 31 by the Act of August 8, 1958, Public Law 609, 85th Congress, 72 Stat. 540; to section 44(d) by the Act of October 3, 1961, Public Law 333, 87th Congress, 75 Stat. 748; and to sections 1(a) (1), 2(d), 6, 7(a), 7(d), 7(e), 7(f), 9, 10, 12(a), 12(c), 13, 14, 15, 16, 21, 23, 24, 29, 30, 32, 33, 35, 44(b), 44(e), and 45 by the Act of October 9, 1962, Public Law 772, 87th Congress, 76 Stat. 769, are included.

Section 1 (15 U.S.C. 1051). Requirements for registering trademarks on the principal register

The owner of a trademark used in commerce may register his trademark under this Act on the principal register hereby established:

(a) By filing in the Patent Office—

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in

commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: Provided, That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying in the Patent Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 2 (15 U.S.C. 1052). Trademarks registrable on the principal register

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;

(b) consist of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof;

(c) consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow;

(d) consists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this Act; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905; and continuing in full force and effect on that date; or (iii) July 5, 1947, in case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons;

(e) consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof, or (3) is primarily merely a surname;

(f) except as expressly excluded in paragraphs (a), (b), (c), and (d) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the 5 years next preceding the date of the filing of the application for its registration (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 3 (15 U.S.C. 1053). Service marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks used in commerce shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided herein in the case of trademarks, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

Sec. 4 (15 U.S.C. 1054). Collective and certification marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin used in commerce, shall be registrable under this Act, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided herein in the case of trademarks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. The Commissioner may establish a separate register for such collective marks and certification marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

Sec. 5 (15 U.S.C. 1055). Use by related companies

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.

Sec. 6 (15 U.S.C. 1056). Disclaimer of unregistrable matter

(a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the

disclaimed matter be or shall have become distinctive of his goods or services (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 7(a) (15 U.S.C. 1057a). Certificate of registration on the principal register. Issuance and form

Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Commissioner or have his signature placed thereon, and a record thereof shall be kept in the Patent Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this Act, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent Office, and any conditions and limitations that may be imposed in the registration (Amended by Public Law 710, 81st Cong., approved Aug. 17, 1950, 64 Stat. 459, and Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 7(b) (15 U.S.C. 1057b). Same—Prima facie evidence

A certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.

Sec. 7(c) (15 U.S.C. 1057c). Certificate of registration—Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the Patent Office. In case of change of ownership the Commissioner shall, at the request of the owner and upon a proper showing and the payment of the fee herein provided, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

Sec. 7(d) (15 U.S.C. 1057d). Certificate of registration—Surrender, cancellation, amendment or disclaimer by registrant

Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*,

That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 7(e) (15 U.S.C. 1057e). Copies of Patent Office records as evidence

Copies of any records, books, papers, or drawings belonging to the Patent Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name by an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 7(f) (15 U.S.C. 1057f). Certificate of registration—Correction of Patent Office mistake

Whenever a material mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 7(g) (15 U.S.C. 1057g). Certification of registration—Correction of applicant's mistake

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the required fee: *Provided*, That the correction does not involve such changes in the registration as to require republication of the mark.

Sec. 8(a) (15 U.S.C. 1058a). Duration of registration—Cancellation at end of 6 years unless affidavit of use filed

Each certificate of registration shall remain in force for 20 years: *Provided*, That the registration of any mark under the provisions of this Act shall be canceled by the Commissioner at the end of 6 years following its date, unless within 1 year next preceding the expiration of such 6 years the registrant shall file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of registration.

Sec. 8(b) (15 U.S.C. 1058b). Cancellation of prior registrations published under sec. 12(c) unless affidavit of use filed

Any registration published under the provisions of subsection (c) of section 12 of this Act shall be canceled by the Commissioner at the end of 6 years after the date of such publication unless within 1 year next preceding the expiration of such 6 years the registrant shall file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

Sec. 8(c) (15 U.S.C. 1058c). Notification of filing affidavit of use

The Commissioner shall notify any registrant who files either of the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor.

Sec. 9 (15 U.S.C. 1059). Renewal of registration

(a) Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application therefor, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and it is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein prescribed.

(b) If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.

(c) An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 10 (15 U.S.C. 1060). Assignment

A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent Office within 3 months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent Office.

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 11 (15 U.S.C. 1061). Acknowledgments and verifications

Acknowledgments and verifications required hereunder may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, and shall be valid if they comply with the laws of the state or country where made.

Sec. 12(a) (15 U.S.C. 1062a). Examination of application—Publication of mark when entitled to registration

Upon the filing of an application for registration and payment of the fee herein provided, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent Office: *Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 12(b) (15 U.S.C. 1062b). Examination of application—Refusal of registration when not entitled

If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reason therefor. The applicant shall have a period of 6 months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of 6 months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.

Sec. 12(c) (15 U.S.C. 1062c). Affidavit claiming benefits of Act—Publication of marks registered under prior acts

A registrant of a mark registered under the provision of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this Act for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 8 of this Act. Marks published under this subsection shall not be subject to the provisions of section 13 of this Act (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 13 (15 U.S.C. 1063). Opposition to registration of marks on the principal register

Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified opposition in the Patent Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act of the mark sought to be registered. For good cause shown, the time for filing opposition may be extended by the Commissioner, who shall notify the applicant. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. An opposition may be amended under such conditions as may be prescribed by the Commissioner (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 14 (15 U.S.C. 1064). Cancellation of registrations

A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(a) within five years from the date of the registration of the mark under this Act; or

(b) within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section a mark registered on the principal register established by this Act, and the prescribed fee shall not be required (Amended by Public Law 787th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 15 (15 U.S.C. 1065). Incontestability under certain conditions of right to use mark

Except on a ground for which application to cancel may be filed any time under subsections (c) and (e) of section 14 of this Act,

except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for 5 consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided, That—*

(1) there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the Patent Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Commissioner within 1 year after the expiration of any such 5-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such 5 consecutive years and is still in use in commerce, and the other matters specified in subsections (1) and (2) hereof; and

(4) no incontestable right shall be acquired in a mark which is the common descriptive name of any article or substance, patented or otherwise.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this Act shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Commissioner within 1 year after the expiration of any period of 5 consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 12 of this Act.

The Commissioner shall notify any registrant who files the above-prescribed affidavit of the filing thereof (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 16 (15 U.S.C. 1066). Interference

Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists. No interference shall be declared between an application and the registration of a mark the right to use of which has become incontestable (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 17 (15 U.S.C. 1067). Interference, opposition, concurrent use application, cancelation—Procedure

In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration. The Trademark Trial and Appeal Board shall include the Commissioner, the Assistant Commissioners, and such Patent Office employees designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner (Amended by par. (a) of Public Law 609, 85th Cong., approved Aug. 8, 1958).

Sec. 18 (15 U.S.C. 1068). Same—Action of Commissioner

In such proceedings the Commissioner may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties hereunder may be established in the proceedings: *Provided*, That in the case of the registration of any mark based on concurrent use, the Commissioner shall determine and fix the conditions and limitations provided for in subsection (d) of section 2 of this Act.

Sec. 19 (15 U.S.C. 1069). Same—Application of equitable principles

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable, may be considered and applied. The provisions of this section shall also govern proceedings heretofore begun in the Patent Office and not finally determined.

Sec. 20 (15 U.S.C. 1070). Appeal to Trademark Trial and Appeal Board

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee (Amended by par. (b) of Public Law 609, 85th Cong., approved Aug. 8, 1958).

Sec. 21 (15 U.S.C. 1071). Appeal to court and review by civil action

(a) (1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the de-

cision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under section 21(b) hereof: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to section 21(a)(2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commission shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

(4) The court shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

(b) (1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs (Amended by Public Law 593, 82nd Cong., approved July 19, 1952, 66 Stat. 792, par. (c) of Public Law 609, 85th Cong., approved Aug. 8, 1958, 72 Stat. 540, and Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 22 (15 U.S.C. 1072). Registration on principal register notice of claim of ownership

Registration of a mark on the principal register provided by this Act or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

Sec. 23 (15 U.S.C. 1091). The supplemental register

Marks registrable on. In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All

marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under paragraphs (a), (b), (c), and (d) of section 2 of this Act, which have been in lawful use in commerce by the proprietor thereof, upon or in connection with any goods or services for the year preceding the filing of the application may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of section 1 so far as they are applicable.

Examination of application. Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 12 of this Act shall apply.

Nature of mark. For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

Mark used in foreign commerce. Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 24 (15 U.S.C. 1092). Supplemental register—Marks not published for opposition—Cancellation

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner (Amended by par. (d) of Public Law 609, 85th Cong., approved Aug. 8, 1958, 72

Stat. 540, and Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 25 (15 U.S.C. 1093). Supplemental register—Certificates to differ

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.

Sec. 26 (15 U.S.C. 1094). Supplemental register—Provisions of Act applicable

The provisions of this Act shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 2(e), 2(f), 7(b), 12(a), 13 to 18, inclusive, 22, 33, and 42 of this Act.

Sec. 27 (15 U.S.C. 1095). Supplemental register—Registration on principal register not precluded

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this Act.

Sec. 28 (15 U.S.C. 1096). Supplemental register—Registration not used to stop importation

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

Sec. 29 (15 U.S.C. 1111). Notice of registration

Notwithstanding the provisions of section 22 hereof, a registrant of a mark registered in the Patent Office, may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this Act by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this Act unless the defendant had actual notice of the registration (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 30 (15 U.S.C. 1112). Classification of goods and services—Registration in a plurality of classes

The Commissioner may establish a classification of goods and services, for convenience of Patent Office administration, but not to limit or extend the applicant's rights. The applicant may file an application to register a mark for any or all of the goods and services upon

or in connection with which he is actually using the mark: *Provided*, That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 31 (15 U.S.C. 1113). Fees and charges

The following fees shall be paid to the Patent Office under this Act:

On filing each original application for registration of a mark in each class on either the principal or the supplemental register, \$25; on filing each application for renewal in each class, \$25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of \$5; on filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, \$10; on filing notice of opposition or application for cancellation, \$25; on appeal from an examiner in charge of the registration of marks, \$25; for issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, \$10; for certificate of correction of registrant's mistake, \$10; for manuscript copies, for every 100 words or fraction thereof, 10 cents; for comparing other copies, 5 cents for every 100 words or fraction thereof; for certifying in any case, additional, \$1; for each additional registration or application which may be included under a single certificate, 50 cents additional; for filing disclaimer, amendment, surrender, or cancellation after registration, \$10.

For abstracts of title: For the search, 1 hour or less, and certificate, \$3; each additional hour or fraction thereof, \$1.50; for each brief from the digest of assignments of 200 words or less, \$1.

For certificate that trademark has not been registered—search and certificate (for deposit in foreign countries only), \$3.

For title reports required for office use, \$1.

For a single printed copy of statement and drawing, 10 cents; if certified, for the grant, additional, \$1; for the certificate, \$1; if renewed, for copy of certificate of renewal additional, \$1.

For photographic copies of records and drawings, the reasonable cost of making them.

For recording every assignment or other paper not exceeding six pages, \$3; for each additional two pages or less, \$1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, 50 cents.

The Commissioner shall refund fees paid by mistake or in excess (Amended by par. (e) of Public Law 609, 85th Cong., approved Aug. 8, 1958).

Sec. 32(1) (15 U.S.C. 1114(1)). Remedies—Infringement

Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 32(2) (15 U.S.C. 1114(2)). Same—Innocent infringement by printers and publishers

Notwithstanding any other provision of this Act, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided*, That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any

method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 33(a) (15 U.S.C. 1115a). Remedies—Certificate of registration on principal register—Prima facie evidence of exclusive right to use mark

Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this Act and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 33(b) (15 U.S.C. 1115b). Same—When conclusive evidence of exclusive right to use mark

If the right to use the registered mark has become incontestable under section 15 hereof, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 15 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

- (1) That the registration or the incontestable right to use the mark was obtained fraudulently; or
- (2) That the mark has been abandoned by the registrant; or
- (3) That the registered mark is being used, by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used; or
- (4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a trade or service mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe to users the goods or services of such party, or their geographic origin; or
- (5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to registration of the mark under this

Act or publication of the registered mark under subsection (c) of section 12 of this Act: *Provided, however,* That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or publication under subsection (c) of section 12 of this Act of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the anti-trust laws of the United States (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 34 (15 U.S.C. 1116). Remedies—Injunctions

The several courts vested with jurisdiction of civil actions arising under this Act shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

Enforcement by other courts. The said courts shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

Notice of suit to Commissioner. It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding arising under the provisions of this Act to give notice

thereof in writing to the Commissioner setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Commissioner, and within one month after the decision is rendered, appeal taken or a decree issued the clerk of the court shall give notice thereof to the Commissioner, and it shall be the duty of the Commissioner on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

Sec. 35 (15 U.S.C. 1117). Remedies—Recovery for violation of rights

When a violation of any right of the registrant of a mark registered in the Patent Office shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and 32 and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 36 (15 U.S.C. 1118). Remedies—Destruction of infringing labels and the like

In any action arising under this Act, in which a violation of any right of the registrant of a mark registered in the Patent Office shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed.

Sec. 37 (15 U.S.C. 1119). Remedies—Power of court over registrations

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the Patent Office, and shall be controlled thereby.

Sec. 38 (15 U.S.C. 1120). Remedies—Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

Sec. 39 (15 U.S.C. 1121). Remedies—Jurisdiction of courts

The district and territorial courts of the United States shall have original jurisdiction, the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia shall have appellate jurisdiction, of all actions arising under this Act, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

Sec. 40 (15 U.S.C. 1122). Remedies—Review by Supreme Court

Writs of certiorari may be granted by the Supreme Court of the United States for the review of cases arising under this Act in the same manner as provided for in cases under the patent laws.

Sec. 41 (15 U.S.C. 1123). Commissioner to make rules for proceedings in the Patent Office

The Commissioner shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office under this Act.

Sec. 42 (15 U.S.C. 1124). Importation of goods bearing infringing marks or names forbidden

That no article of imported merchandise which shall copy or simulate the name of¹ any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this Act or shall bear a name or mark calculated to induce the public to believe that the

¹ The word "the" appears at this point in the Act through typographical error.

article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

NOTE: Copies of regulations referred to in this section may be obtained from the Department of the Treasury.

Sec. 43(a) (15 U.S.C. 1125a). False designations of origin and false descriptions forbidden

Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

Sec. 43(b) (15 U.S.C. 1125b). Same—Importation forbidden

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized.

Sec. 44(a) (15 U.S.C. 1126a). Register of marks communicated by international bureaus

The Commissioner shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party and upon the payment of the fees required by such conventions and the fees herein prescribed may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

NOTE: The United States is not at present a party to the parts of the international conventions providing for international bureaus for the registration or communication of trademarks.

Sec. 44(b) (15 U.S.C. 1126b). Nationals of foreign countries which have treaties with the United States—Applicability of Act to

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

NOTE: International Convention for the Protection of Industrial Property of 1833, revised at Washington in 1911, 204 O.G. 1011, July 21, 1914 (37 Stat. 1645; Treaty Series 579); at The Hague in 1925, 407 O.G. 298, June 9, 1931 (47 Stat. 1789; Treaty Series 834); at London in 1934; 613 O.G. 23, August 3, 1948 (53 Stat. 1748; Treaty Series 941); and at Lisbon in 1958, 775 O.G. 321, February 13, 1962 (53 Stat. 1748). A list of the countries and revision to which they have adhered appears on page 113.

General Inter-American Convention for Trade-Mark and Commercial Protection (Pan-American Trade-Mark Convention) of 1929, 46 Stat. 2907. The following countries have adhered to this convention: Colombia; Cuba; Guatemala; Haiti; Honduras; Nicaragua; Panama; Paraguay; Peru; United States.

Brazil and the Dominican Republic are parties to the earlier Pan-American Trade-Mark Convention of 1923, 44 Stat. 2494, and Ecuador and Uruguay are parties to the earlier Pan-American Trade-Mark Convention of 1910, 39 Stat. 1675.

Sec. 44(c) (15 U.S.C. 1126c). Same—Prior registration of mark in country of origin, when required

No registration of a mark in the United States by a person described in paragraph (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

Country of origin defined. For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in paragraph (b) of this section, the country of which he is a national.

Sec. 44(d) (15 U.S.C. 1126d). Same—Right of priority

An application for registration of a mark under sections 1, 2, 3, 4, or 23 of this Act filed by a person described in paragraph (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in paragraph (b) shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: *Provided*, That—

- (1) the application in the United States is filed within 6 months from the date on which the application was first filed in the foreign country;
- (2) the application conforms as nearly as practicable to the requirements of this Act, but use in commerce need not be alleged;
- (3) the rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this subsection (d);
- (4) nothing in this subsection (d) shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: *Provided*, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority (Amended by Public Law 333, 87th Cong., approved Oct. 3, 1961, 75 Stat. 748).

NOTE: Section 3 of Public Law 333, 87th Cong., approved October 3, 1961, 75 Stat. 748, the provision which added the last paragraph above provided that "This Act shall take effect on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon October 31, 1958, comes into force with respect to the United States and is applied only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing." This provision become effective Jan. 4, 1962.

Sec. 44(e) (15 U.S.C. 1126e). Same—Registration of mark duly registered in country of origin

A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register herein provided. The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 44(f) (15 U.S.C. 1126f). Same—Registration independent of registration in country of origin

The registration of a mark under the provisions of paragraphs (c), (d), and (e) of this section by a person described in paragraph (b) shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this Act.

Sec. 44(g) (15 U.S.C. 1126g). Same—Trade names or commercial names protected

Trade names or commercial names of persons described in paragraph (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

Sec. 44(h) (15 U.S.C. 1126h). Same—Protection against unfair competition

Any person designated in paragraph (b) of this section as entitled to the benefits and subject to the provisions of this Act shall be entitled to effective protection against unfair competition, and the remedies provided herein for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

Sec. 44(i) (15 U.S.C. 1126i). Same—Citizens or residents of United States to have same rights

Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in paragraph (b) hereof.

Sec. 45 (15 U.S.C. 1127). Construction and definitions

In the construction of this Act, unless the contrary is plainly apparent from the context:

United States. The United States includes and embraces all territory which is under its jurisdiction and control.

Commerce. The word "commerce" means all commerce which may lawfully be regulated by Congress.

Principal Register, Supplemental Register. The term "principal register" refers to the register provided for by sections 1 through 22 hereof, and the term "supplemental register" refers to the register provided for by section 23 through 28 hereof.

Person, juristic person. The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this Act includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

Applicant, registrant. The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

Commissioner. The term "Commissioner" means the Commissioner of Patents.

Related company. The term "related company" means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.

Trade name, commercial name. The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law.

Trademark. The term "trademark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.

Service mark. The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

Certification mark. The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other

origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

Collective mark. The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

Mark. The term "mark" includes any trademark, service mark, collective mark, or certification mark entitled to registration under this Act whether registered or not.

Use in commerce. For the purposes of this Act a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.

Abandonment of mark. A mark shall be deemed to be "abandoned"—

- (a) when its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Non-use for two consecutive years shall be prima facie abandonment.
- (b) when any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin.

Colorable imitation. The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

Registered mark. The term "registered mark" means a mark registered in the United States Patent Office under this Act or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent Office" means registered marks.

Prior acts. The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920", means the respective Act as amended.

Counterfeit. A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

Singular and plural. Words used in the singular include the plural and vice versa.

Intent of Act. The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive

and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations (Amended by Public Law 772, 87th Cong., approved Oct. 9, 1962, 76 Stat. 769).

Sec. 46(a). Time of taking effect—Repeal of prior acts

This Act shall be in force and take effect one year from its enactment, but except as otherwise herein specifically provided shall not affect any suit, proceeding, or appeal then pending. All Acts and parts of Acts inconsistent herewith are hereby repealed effective one year from the enactment hereof, including the following Acts insofar as they are inconsistent herewith: The Act of Congress approved March 3, 1881, entitled "An Act to authorize the registration of trademarks and protect the same"; the Act approved August 5, 1882, entitled "An Act relating to the registration of trademarks"; the Act of February 20, 1905 (U.S.C., title 15, secs. 81 to 109, inclusive), entitled "An Act to authorize the registration of trademarks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same", and the amendments thereto by the Acts of May 4, 1906 (U.S.C., title 15, secs. 131 and 132; 34 Stat. 169), March 2, 1907 (34 Stat. 1251, 1252), February 18, 1909 (35 Stat. 627, 628), February 18, 1911 (36 Stat. 918), January 8, 1913 (37 Stat. 649), June 7, 1924 (43 Stat. 647), March 4, 1925 (43 Stat. 1268, 1269), April 11, 1930 (46 Stat. 155), June 10, 1938 (Public, Numbered 586, Seventy-fifth Congress, ch. 332, third session); the Act of March 19, 1920 (U.S.C., title 15, secs. 121 to 128, inclusive), entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", and the amendments thereto, including the Act of June 10, 1938 (Public, Numbered 586, Seventy-fifth Congress, ch. 332, third session): *Provided*, That this repeal shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act, or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act; but nothing contained in this Act shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act which does not relate to trademarks, or as restricting or increasing the authority of any Federal depart-

ments or regulatory agency except as may be specifically provided in this Act (15 U.S.C. 1051 note).

Sec. 46(b). Existing registrations under prior acts

Acts of 1881 and 1905. Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905, shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act to the same extent and with the same force and effect as though registered on the principal register established by this Act except as limited in sections 8, 12, 14, and 15 of this Act. Marks registered under the "10-year proviso" of section 5 of the Act of February 20, 1905, as amended, shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of section 2 of this Act and may be renewed under section 9 hereof as marks coming within said paragraph.

Act of 1920. Registrations now existing under the Act of March 19, 1920, shall expire 6 months after the effective date of this Act, or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act relating to marks registered on the supplemental register established by this Act, and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act.

Subject to registration under this Act. Marks registered under previous Acts may, if eligible, also be registered under this Act (15 U.S.C. 1051 note).

Sec. 47(a). Applications pending on effective date of Act

All applications for registration pending in the Patent Office at the effective date of this Act may be amended, if practicable, to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof (15 U.S.C. 1051 note).

Sec. 47(b). Appeals pending on effective date of Act

In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the Dis-

trict of Columbia or the United States Supreme Court at the effective date of this Act, the court, if it be of the opinion that the provisions of this Act are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper (15 U.S.C. 1051 note).

Sec. 48. Prior acts not repealed

Section 4 of the Act of January 5, 1905 (U.S.C., title 36, sec. 4), as amended, entitled "An Act to incorporate the National Red Cross," and section 7 of the Act of June 15, 1916 (U.S.C., title 36, sec. 27), entitled "An Act to incorporate the Boy Scouts of America, and for other purposes," and the Act of June 20, 1936 (U.S.C., title 22, sec. 248), entitled "An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation," are not repealed or affected by this Act (15 U.S.C. 1051 note).

NOTE: The first and third of the laws referred to in this section have been repealed and replaced by sections 706 and 708, respectively, of U.S.C., title 18, Crimes and Criminal Procedure, enacted June 25, 1948, effective September 1, 1948.

Sec. 49. Preservation of existing rights

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act (15 U.S.C. 1051 note).

Sec. 50. Severability

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act shall not be affected thereby (15 U.S.C. 1051 note).

UNITED STATES CODE, TITLE 35, PATENTS
PATENT OFFICE, ESTABLISHMENT, OFFICERS,
FUNCTIONS

35 U.S.C. 1. Establishment. The Patent Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

35 U.S.C. 2. Seal. The Patent Office shall have a seal with which letters patent, certificates of trademark registrations, and papers issued from the Office shall be authenticated.

35 U.S.C. 3. Officers and employees. A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief, shall be appointed by the President, by and with the advice and consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commissioner assigned to them by the Commissioner. The first assistant commissioner, or, in the event of a vacancy in that office, the assistant commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

The annual rate of compensation of the Commissioner shall be \$20,000.

The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

35 U.S.C. 6. Duties of Commissioner. The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks; and he shall have charge of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

35 U.S.C. 11. Publications. (a) The Commissioner may print, or cause to be printed, the following:

1. Patents, including specifications and drawings, together with copies of the same. The Patent Office may print the headings of the drawings for patents for the purpose of photolithography.

2. Certificates of trademark registrations, including statements and drawings, together with copies of the same.

3. The Official Gazette of the United States Patent Office.

4. Annual indexes of patents and patentees, and of trademarks and registrants.

5. Annual volumes of decisions in patent and trademark cases.

6. Pamphlet copies of the patent laws and rules of practice, laws and rules relating to trademarks, and circulars or other publications relating to the business of the Office.

(b) The Commissioner may exchange any of the publications specified in items 3, 4, 5, and 6 of subsection (a) of this section for publications desirable for the use of the Patent Office.

PROCEEDINGS IN THE PATENT OFFICE

35 U.S.C. 21. Day for taking action falling on Saturday, Sunday, or holiday. When the day, or the last day, for taking any action or paying any fee in the United States Patent Office falls on Saturday, Sunday, or a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day.

35 U.S.C. 22. Printing of papers filed. The Commissioner may require papers filed in the Patent Office to be printed or typewritten.

35 U.S.C. 23. Testimony in Patent Office cases. The Commissioner may establish rules for taking affidavits and depositions required in cases in the Patent Office. Any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where he resides, may take such affidavits and depositions.

35 U.S.C. 24. Subpoenas, witnesses. The clerk of any United States court for the district wherein testimony is to be taken for use in any contested case in the Patent Office, shall, upon the application of any party thereto, issue a subpoena for any witness residing or being within such district, commanding him to appear and testify before an officer in such district authorized to take depositions and affidavits, at the time and place stated in the subpoena. The provisions of the Federal Rules of Civil Procedure relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent Office.

Every witness subpoenaed and in attendance shall be allowed the fees and traveling expenses allowed to witnesses attending the United States district courts.

A judge of a court whose clerk issued a subpoena may enforce obedience to the process or punish disobedience as in other like cases, on proof that a witness served with such subpoena, neglected or refused

to appear or to testify. No witness shall be deemed guilty of contempt for disobeying such subpoena unless his fees and traveling expenses in going to, and returning from, and one day's attendance at the place of examination, are paid or tendered him at the time of the service of the subpoena; nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

PRACTICE BEFORE PATENT OFFICE

35 U.S.C. 31. Regulations for agents and attorneys. The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

35 U.S.C. 32. Suspension or exclusion from practice. The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Office. The reason for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

NOTES OF OTHER STATUTES

United States Code

Some sections of other titles of the United States Code, relating to trademarks are noted here for convenience. This list does not purport to be complete.

7 U.S.C. 135. The Federal Insecticide, Fungicide and Rodenticide Act, relating to the requirements for labeling of economic poisons.

7 U.S.C. 1551-1610. The Federal Seed Act, relating to requirements for labeling of seeds in interstate commerce.

11 U.S.C. 110. Title to property, relating to vesting in the trustee, by operation of law, title to estate of a bankrupt and his successor or successors.

14 U.S.C. 701, relating to unauthorized use of words, "Coast Guard," etc.

15 U.S.C. 1. Sherman Act (Sec. 1) as amended by Miller-Tydings Act.

15 U.S.C. 45, relating to State fair trade laws.

15 U.S.C. 68. The Wool Products Labeling Act, relating to the labeling of wool products.

15 U.S.C. 69. The Fur Products Labeling Act, relating to the labeling of fur and fur products.

15 U.S.C. 70. The Textile Fiber Products Identification Act, relating to the use of trademarks and generic names in the advertising or labeling of textile fiber products.

15 U.S.C. 297, relating to use of trademarks or trade names in connection with the importation, exportation or carriage in interstate commerce of merchandise made of gold or silver or their alloys.

15 U.S.C. 1261-1273, relating to the labeling of hazardous substances.

18 U.S.C. 701, relating to badges, identification cards, and other insignia prescribed by heads of departments and independent offices of the United States for use by officers and subordinates thereof.

18 U.S.C. 705, relating to the unauthorized use on merchandise of any badge, medal, emblem, or other insignia or any colorable imitation thereof of any veteran's organization incorporated by enactment of Congress or of any organization formally recognized by any such veteran's organization as an auxiliary thereof.

18 U.S.C. 706, relating to the unauthorized use of the Greek red cross on a white ground, or any sign or insignia made or colored in imitation thereof or the words "Red Cross" or "Geneva Cross" or any combination of these words.

18 U.S.C. 707, relating to the words "4-H Club" and the emblem of the 4-H Clubs, consisting of a green four-leaf clover with stem and the letter H in white or gold on each leaflet, or any sign, insignia, or symbol in colorable imitation thereof.

18 U.S.C. 708, relating to the unauthorized use as a trademark, commercial label, or portion thereof, or as an advertisement or insignia for any business or organization or for any trade or commercial purpose, the coat of arms of the Swiss Confederation, consisting of an upright white cross with equal arms and lines on a red ground, or any simulation thereof.

18 U.S.C. 709, relating to false advertising or misuse of names to indicate Federal agency.

18 U.S.C. 711, relating to the character and name "Smokey Bear."

18 U.S.C. 712, relating to misuse by collecting agencies or private detective agencies of names, emblems, and insignia to indicate Federal agency.

18 U.S.C. 1158, relating to penalty for counterfeiting or imitating Government trademarks for Indian products.

19 U.S.C. 1337(a). Tariff Act of 1930, relating to unfair competition and unfair acts in the importation of articles into the United States, or sale by the owner, importer, consignee or agent, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated in the United States or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States.

19 U.S.C. 1526(a). Tariff Act of 1930, barring importation into the United States of merchandise of foreign manufacture bearing a trademark registered in the Patent Office by a person domiciled in the United States if copy of the registration certificate has been filed with the Secretary of the Treasury unless written consent of the trademark owner has been secured.

21 U.S.C. 71-96. The Meat Inspecting Act, relating to the inspection and labeling of meat and meat products.

21 U.S.C. 301, 321-392. The Federal Food, Drug, and Cosmetic Act, relating to the requirements for labeling of food, drugs, and cosmetics.

21 U.S.C. 457. Poultry Products Inspection Act, relating to requirements for labeling of poultry products in interstate commerce.

27 U.S.C. 201-212. The Federal Alcohol Administration Act, relating to certificates of label approval of alcoholic beverages.

28 U.S.C. 211-216, 831-834, 1541-1543, 1926, relating to the United States Court of Customs and Patent Appeals.

28 U.S.C. 1338, relating to jurisdiction of District Courts in trademark suits.

36 U.S.C. 27, relating to the exclusive right of the Boy Scouts of America to have and use all emblems and badges, descriptive or designating marks, and words or phrases now or heretofore used in carrying out its program.

36 U.S.C. 36, relating to the exclusive right of the Girl Scouts of America to have and use all emblems and badges, descriptive or designating marks, and words or phrases now or heretofore used in carrying out its program.

36 U.S.C. 48, relating to exclusive right to the name "The American Legion."

36 U.S.C. 56f, relating to exclusive right to the name "United Spanish War Veterans."

36 U.S.C. 780, relating to exclusive right to the name "Ladies of the Grand Army of the Republic," emblems, seals and badges.

36 U.S.C. 87, relating to exclusive right to the name "The United States Blind Veterans of the World War."

36 U.S.C. 90h, relating to exclusive right to the name "Disabled American Veterans."

36 U.S.C. 100, relating to exclusive right to the name "American War Mothers."

36 U.S.C. 117, relating to exclusive right to the name "Veterans of Foreign Wars of the United States" and seal, emblems and badges.

36 U.S.C. 286, relating to the name "Future Farmers of America" and the initials FFA.

36 U.S.C. 379, relating to penalty for improper use of the emblems of the United States Olympic Association consisting of an escutcheon having a blue chief and vertically extending alternate red and white bars on the base with five interlocked rings displayed on the chief, or any other sign or insignia made or colored in imitation thereof, or the words "Olympic," "Olympiad" or "Citius Altius Fortius" or any combination of such words.

36 U.S.C. 418, relating to the name "Conference of State Societies, Washington, D.C.," and seal, emblems and badges.

36 U.S.C. 446, relating to the name "National Conference on Citizenship," and emblems, seals, and badges.

36 U.S.C. 477, relating to the name "National Safety Council," and emblem, seals and badges.

36 U.S.C. 516, relating to the name "Board for Fundamental Education," and seals, emblems, and badges.

36 U.S.C. 547, relating to the name the "Sons of Union Veterans of the Civil War," and emblems, seals, and badges.

36 U.S.C. 587, relating to the name "The Foundation of the Federal Bar Association."

36 U.S.C. 676, relating to exclusive right to the name "National Music Council," seals, emblems and badges.

36 U.S.C. 777, relating to exclusive right to the name "Veterans of World War I," emblems, seals and badges.

36 U.S.C. 867, relating to exclusive right to the name "Blinded Veterans Association," seals, emblems and badges.

36 U.S.C. 895, relating to exclusive right to the name "Big Brothers of America," emblems, seals and badges.

36 U.S.C. 956, relating to exclusive right to the name "Blue Star Mothers of America, Inc.," emblems, seals and badges.

36 U.S.C. 1017, relating to exclusive right to the name "National Woman's Relief Corps, Auxiliary of the Grand Army of the Republic," emblems, seals and badges, and designating marks, words or phrases.

36 U.S.C. 1056, relating to exclusive right to the name "Naval Sea Cadet Corps," insignia, emblems and badges.

48 U.S.C. 1643, relating to the non-applicability of certain provisions of the Trademark Act to the Virgin Islands.

Public Law 817, 87th Cong., approved Oct. 16, 1962, 76 Stat. 929, relating to exclusive right to the name "American Symphony Orchestra League."

Public Law 837, 87th Cong., approved Oct. 16, 1962, 76 Stat. 1071, prohibiting use by collecting agencies and private detective agencies of any name, emblem, or insignia which reasonably tends to convey the impression that any such agency is an agency of the Government of the District of Columbia.

Public Law 861, 87th Cong., approved Oct. 23, 1962, 76 Stat. 1139, amending Trading with the Enemy Act providing for disposition of vested trademarks.

Private Law 72, 83rd Cong., 1st sess., ch. 145, approved June 18, 1953; 67 Stat. A27, relating to the use of the words "Columbus University."

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

The following is a list of countries which have adhered to the Convention of Paris for the Protection of Industrial Property as revised at Lisbon in 1958, and to previous versions of the Convention, the revision of London of 1934, of The Hague of 1925, and the revision of Washington of 1911. The original date is given and also the date of the adherence to the different versions. In some instances a country becoming independent or acquiring a separate status has continued previous adherence under a new name or under the new status; in such cases the original dates are still used.

Country	Original date	Washington 1911	The Hague 1925	London 1934	Lisbon 1958
Australia	Aug. 5, 1907	Oct. 10, 1925	Feb. 12, 1933	June 2, 1958	
Papua and New Guinea	Feb. 12, 1933		do		
Norfolk Is. and Nauru	July 29, 1936		July 29, 1936		
Austria	Jan. 1, 1909	May 1, 1913	June 1, 1928	July 19, 1947	
Belgium	July 7, 1884	Aug. 8, 1914	July 27, 1929	Nov. 24, 1939	
Brazil	do	Dec. 17, 1914	Oct. 26, 1929		
Bulgaria	June 13, 1921	June 13, 1921			
Canada	Sept. 1, 1923	Sept. 1, 1923	June 1, 1928	July 30, 1951	
Ceylon	June 10, 1905	June 20, 1913		Dec. 29, 1952	
Cuba	Nov. 17, 1904	Jan. 3, 1922			
Czechoslovakia	Oct. 5, 1919	Oct. 5, 1919	Mar. 3, 1933		
Denmark (including Faroe Islands)	Oct. 1, 1894	Aug. 30, 1914	Sept. 10, 1937	Aug. 1, 1938	
Dominican Republic	July 11, 1890	May 1, 1913			
Egypt	July 1, 1951			July 1, 1951	Feb. 17, 1963
Finland	Sept. 20, 1921	Sept. 20, 1921		May 30, 1953	Jan. 4, 1962
France (including Algeria and colonies)	July 7, 1884	May 1, 1913	Oct. 20, 1930	June 25, 1939	
Germany	May 1, 1903	do	June 1, 1928	Aug. 1, 1938	Do.
Greece	Oct. 2, 1924	Oct. 2, 1924		Nov. 27, 1953	Do.
Haiti	July 1, 1958			July 1, 1958	Do.
Hungary	Jan. 1, 1909	May 1, 1913	May 16, 1929	July 4, 1962	
Iceland	May 5, 1962			May 5, 1962	
Indonesia	Oct. 1, 1888		June 1, 1928	Aug. 8, 1948	Do.
Iran	Dec. 16, 1959			Dec. 16, 1959	
Ireland	Dec. 4, 1925	Dec. 4, 1925		May 14, 1958	
Israel	Sept. 12, 1933		Sept. 12, 1933	Mar. 24, 1950	
Italy	July 7, 1884	May 1, 1913	June 1, 1938	July 15, 1955	
Japan	July 15, 1899	do	Jan. 1, 1935	Aug. 1, 1938	
Lebanon	Sept. 1, 1924	Sept. 1, 1924	Nov. 17, 1930	Sept. 30, 1947	
Liechtenstein	July 14, 1933		July 14, 1933	Jan. 28, 1951	
Luxembourg	June 30, 1922	June 30, 1922		July 30, 1945	
Mexico	Sept. 7, 1903	May 1, 1913	Jan. 16, 1930	July 14, 1955	
Monaco	April 29, 1956			April 29, 1956	Do.
Morocco	July 30, 1917	July 30, 1917	Oct. 20, 1930	Jan. 21, 1941	
Netherlands	July 7, 1884	May 1, 1913	June 1, 1928	Aug. 8, 1948	
Netherlands Indies	Oct. 1, 1888		do	do	
Surinam and Curacao	July 1, 1890		do	do	
New Zealand	Sept. 7, 1891	June 20, 1913	July 29, 1931	July 14, 1946	
Western Samoa	July 29, 1931		do	do	
Norway	July 1, 1885	May 1, 1913		Aug. 1, 1938	
Poland	Nov. 10, 1919	Nov. 10, 1919	Nov. 22, 1931		
Portugal (including Azores and Madeira)	July 7, 1884	May 1, 1913	Nov. 17, 1928	Nov. 7, 1949	
Rhodesia and Nyasaland, Federation of	Apr. 1, 1958			Apr. 1, 1958	
Roumania	Oct. 6, 1920	Oct. 6, 1920			
San Marino	Mar. 4, 1960			Mar. 4, 1960	
South Africa	Dec. 1, 1947			Dec. 1, 1947	
Spain	July 7, 1884	May 1, 1913	June 1, 1928	Mar. 2, 1956	
Spanish colonies	Dec. 15, 1947		Dec. 15, 1947		
Sweden	July 1, 1885	Jan. 11, 1917	July 1, 1934	July 1, 1953	
Switzerland	July 7, 1884	May 1, 1913	June 15, 1929	Sept. 24, 1939	
Syria	Sept. 1, 1924	Sept. 1, 1924	Nov. 17, 1930	Sept. 30, 1947	Feb. 17, 1963
Tunis	July 7, 1884	May 1, 1913	Oct. 20, 1930	Oct. 4, 1942	
Turkey	Oct. 10, 1925	Oct. 10, 1925	Aug. 21, 1930	June 27, 1957	
United Kingdom	July 7, 1884	May 1, 1913	June 1, 1928	Aug. 1, 1938	Jan. 4, 1962
Tanganyika	Jan. 1, 1938		Jan. 1, 1938	Jan. 28, 1951	
Trinidad and Tobago	May 14, 1908	June 20, 1913	Oct. 21, 1929		
Singapore	Nov. 12, 1949			Nov. 12, 1949	
United States	May 30, 1887	May 1, 1913	Mar. 6, 1931	Aug. 1, 1938	Do.
Vatican City	Sept. 29, 1960			Sept. 29, 1960	
Viet-Nam	July 7, 1884	May 1, 1913	Oct. 20, 1930	June 25, 1939	
Yugoslavia	do	Feb. 26, 1921	Oct. 29, 1928		

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NOTE: In addition to page numbers, references are also given to the rule number, to sections of the Trademark Act of 1946 and to the identifying numbers of the sample forms included in this publication.

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